AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

9-2-88
Vol. 53 No. 171
Pages 34013-34272

federal register

Friday
September 2, 1988

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, and Chicago, IL, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months in paper form, or $188.00 per year, or $94.00 for 6 months in microfiche form, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 53 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

WASHINGTON, DC

WHEN: September 13; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: Doris Tucker, 202–523–3419

CHICAGO, IL

WHEN: September 19; at 9:15 a.m.
WHERE: Room 3320, Federal Building, 230 S. Dearborn St., Chicago, IL
RESERVATIONS: Call the Federal Information Center, Chicago 312–353–5692

Contents

Federal Register

Vol. 53, No. 171

Thursday, September 2, 1988

Administrative Conference of the United States
NOTICES
Meetings:
Administration Governmental Process, and Rulemaking Committees, 34134

Agricultural Marketing Service
RULES
Almonds grown in California; correction, 34035
Kiwifruit grown in California, 34033
Lemons grown in California and Arizona, 34033
Oranges (navel and Valencia) grown in Arizona and California, 34022, 34026
(2 documents)
PROPOSED RULES
Dates (domestic) produced or packed in California, 34108
Lemons grown in California and Arizona, 34107

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Soil Conservation Service

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Horses from countries affected with CEM—
Switzerland, 34037
Interstate transportation of animals and animal products (quarantine):
Brucellosis in cattle and bison—
Particle concentration fluoresence immunoassay test, 34035
Overtime services relating to imports and exports:
Commuted traveltime periods, 34021
Plant related quarantine, domestic:
Gypsy moth, 34014
NOTICES
Animal welfare lists:
Horse protection—
Disqualification under Horse Protection Act, 34134
Environmental statements; availability, etc.:
Recombinant derived live pseudorabies virus vaccine field testing, 34134

Army Department
NOTICES
Patent licenses, exclusive:
Army Electronics Technology and Devices Laboratory, NJ, 34142

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
RULES
Drawbridge operations:
New Jersey, 34076
PROPOSED RULES
Drawbridge operations:
California, 34129
Florida, 34130

Commerce Department
See Export Administration Bureau; International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; 1988:
Additions and deletions, 34140
(2 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Korea; correction, 34139
Singapore, 34139

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Morgan Stanley Capital International United Kingdom Stock Index, 34140
Meetings; Sunshine Act, 34192
(4 documents)

Defense Department
See also Army Department; Navy Department
RULES
Acquisition regulations:
Contract reporting, 34090
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34224
NOTICES
Agency information collection activities under OMB review, 34141
Environmental statements; availability, etc.:
Camp Ripley Army National Guard Training Site, MN; mission expansion/multiple construction, 34141

Education Department
NOTICES
Meetings:
Educational Research and Improvement National Advisory Council, 34143
Vocational Education National Council, 34144

Employment and Training Administration
PROPOSED RULES
Federal-State unemployment compensation program:
Income and eligibility verification system, 34120
NOTICES
Apprenticeship 2000 issue paper and initiative; comment summary, 34250

Job Training Partnership Act:
Migrant and seasonal farmworker programs—
Federal assistance and grant application solicitation; preapplication, 34178
Research, evaluation, pilot, and demonstration procurement plan; 1988 PY, 34174

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 34181

Energy Department
See also Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
CBI Research Corp., 34144

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
South Dakota, 34077
Hazardous waste:
Storage and treatment tank systems, 34079
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 34132
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 34148
Weekly receipts, 34148
Meetings:
National Advisory Council Environmental Technology Transfer, 34148
Toxic and hazardous substances control:
Premanufacture notices; monthly status reports, 34232, 34238
(2 documents)

Equal Employment Opportunity Commission
NOTICES
Meetings; Sunshine Act, 34192

Export Administration Bureau
See also International Trade Administration
NOTICES
Foreign availability assessments:
Sputtering equipment, 34135

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Funding and fiscal affairs—
Capitalization bylaws, issuance and retirement equities, etc., 34109

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Air defense identification zones (ADIZ); security control Correction, 34043
Airworthiness directives:
Airplanes, small—
Cabin safety and occupant protection; correction, 34194
CASA, 34038
Cessna, 34040
Airworthiness standards:
Rotorcraft; normal and transport category; powerplant and rotor drive aspects of type certification, 34198
Standard instrument approach procedures, 34039
Transition areas, 34041
VOR Federal airways, 34042
PROPOSED RULES
Airworthiness directives:
Boeing, 34116, 34117
(2 documents)
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 34189
Air Traffic Procedures Advisory Committee, 34190

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 34149
Privacy Act; systems of records, 34149

Federal Crop Insurance Corporation
RULES
Crop insurance endorsements, etc.:
Malting barley; correction, 34022

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 34192

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Arizona; correction, 34089
Flood insurance; communities eligible for sale:
Texas et al., 34087

Federal Energy Regulatory Commission
PROPOSED RULES
Electric utilities (Federal Power Act):
Hydroelectric power projects; relicensing, 34119
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
Niagara Mohawk Power Corp. et al., 34144
Hydroelectric applications, 34145
Natural gas certificate filings:
Trunkline LNG Co. et al., 34146
Applications, hearings, determinations, etc.:
Mid Louisiana Gas Co., 34146
South Georgia Natural Gas Co., 34147
Trunkline Gas Co., 34147

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 34192

Food and Drug Administration
RULES
Food additives:
Paper and paperboard components—
Maleic anhydride, etc., 34043
NOTICES
Human drugs:
New drug applications—
McNeil Pharmaceutical, 34167

Food and Nutrition Service
RULES
Food distribution program:
National commodity processing program, 34013

General Services Administration
RULES
Acquisition regulations:
Novation agreements, 34089
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34224

Health and Human Services Department
See also Food and Drug Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 34166

Interior Department
See Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Employee plans; cash or deferred arrangements
Correction, 34194
Foreign corporation branch profits tax, 34045
PROPOSED RULES
Excise and income taxes:
Cash or deferred arrangements (401(k) and nondiscrimination requirements for employee and matching contributions
Correction, 34194
Income taxes:
Foreign corporation branch profits tax; cross reference, 34120

International Trade Administration
See also Export Administration Bureau
NOTICES
Antidumping:
Shock absorbers from Brazil, 34137

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Union Railroad Co., 34173

Justice Department
See also Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments
Hoechst Celanese Corp., 34173

Juvenile Justice and Delinquency Prevention Office
NOTICES
Meetings:
Missing Children's Advisory Board, 34173

Labor Department
See also Employment and Training Administration, Employment Standards Administration, Occupational Safety and Health Administration
NOTICES
Meetings:
Workforce Quality and Labor Market Efficiency Commission, 34174

Land Management Bureau
NOTICES
Meetings:
Boise District Grazing Advisory Board, 34169
Realty actions; sales, leases, etc.:
Wyoming, 34169
Withdrawal and reservation of lands:
Colorado, 34170
(2 documents)
Oregon, 34170, 34171
(3 documents)

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Miscellaneous amendments, 34224

National Archives and Records Administration
PROPOSED RULES
Records management:
Records transfer, 34131
NOTICES
Agency records schedules availability, 34182

National Bureau of Standards
NOTICES
Information processing standards, Federal:
POSIX system implementors workshop, 34138

National Institutes of Health
NOTICES
Meetings:
National Heart, Lung, and Blood Institute, 34168
(4 documents)
National Institute of Diabetes and Digestive and Kidney Diseases, 34169
Recombinant DNA Advisory Committee, 34246
Recombinant DNA molecules research:
Actions under guidelines—
Proposed, 34246

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Pacific Fishery Management Council, 34138
Permits:
Marine mammals, 34138, 34139
(2 documents)

National Park Service
NOTICES
Boundary establishment, descriptions, etc.,
Gettysburg National Military Park, PA, 34172

Navy Department
NOTICES
Meetings.
Naval Research Advisory Committee, 34142
Senior Executive Service:
Performance Review Boards, membership, 34142

Nuclear Regulatory Commission
NOTICES
Meetings:
Reactor Safeguards Advisory Committee, 34183
Regulatory guides; issuance, availability, and withdrawal, 34184
Applications, hearings, determinations, etc.:
Arkansas Power & Light Co., 34184

Occupational Safety and Health Administration
PROPOSED RULES
State plans; development, enforcement, etc.:
Virginia, 34121

Public Health Service
See Food and Drug Administration; National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Colorado River Water Quality Improvement Program, UT, 34172

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 34186
National Securities Clearing Corp., 34187
Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 34185
Applications, hearings, determinations, etc.:
Criterion Equity Trust, 34188

Small Business Administration
NOTICES
Disaster loan areas:
Pennsylvania, 34188
Applications, hearings determinations, etc.:
First of Nebraska Investment Corp., 34189
Mariner Venture Capital Corp., 34189

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Colorado River Water Quality Improvement Program, UT, 34172

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submission, 34128

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration
RULES
Contract Appeals Board procedure rules (acquisition regulations), 34104

Treasury Department
See also Internal Revenue Service
NOTICES
Agency information collection activities under OMB review 34190
(2 documents)
Notes, Treasury:
AE-1990 series, 34191
M-1993 series, 34191

United States Information Agency
NOTICES
Grants; availability, etc.:
University affiliations program, 34191

Veterans Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Geriatrics and Gerontology Advisory Committee, 34191

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 34198

Part III
Department of Defense, General Services Administration, and National Aeronautics and Space Administration, 34224

Part IV
Environmental Protection Agency, 34232

Part V
Environmental Protection Agency, 34238

Part VI
Department of Health and Human Services, National Institutes of Health, 34246

Part VII
Department of Labor, Employment and Training Administration, 34250

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
252 34013
301 34014
354 34021
401 34022
907 (2 documents) 34022, 34026
908 (2 documents) 34022, 34026
910 34033
920 34033
981 34035
Proposed Rules:
910 34107
987 34108

9 CFR
78 34035
92 34037

12 CFR
Proposed Rules:
615 34109

14 CFR
1 34198
23 34194
27 34198
29 34198
33 34198
39 (2 documents) 34038, 34040
71 (2 documents) 34041, 34042
97 34039
99 34043
Proposed Rules:
39 (2 documents) 34116, 34117

18 CFR
Proposed Rules:
4 34119
16 34119

20 CFR
Proposed Rules:
603 34120

21 CFR
176 34043

26 CFR
1 (2 documents) 34045, 34194
602 (2 documents) 34045, 34194
Proposed Rules:
1 (2 documents) 34120, 34194
54 34194
602 34120

29 CFR
Proposed Rules:
1952 34121

30 CFR
925 34128

33 CFR
117 34076
Proposed Rules:
117 (2 documents) 34129, 34130

36 CFR
Proposed Rules:
1228 34131

40 CFR
52 34077
260 34077
264 34077
265 34077
270 34077
Proposed Rules:
52 34132

44 CFR
64 34087
67 34089

48 CFR
Ch. 63 34104
1 34224
3 34224
7 34224
9 34224
10 34224
19 34224
29 34224
31 34224
36 34224
47 34224
52 34224
204 34090
252 34090
542 34089

Rules and Regulations

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule will implement two changes to the National Commodity Processing (NCP) Program as proposed in the March 7, 1988 proposed NCP rule. This action will implement those provisions pertaining to (1) "other" approvable donated commodity value-pass-through (VPT) systems and (2) the definition of "refund" as it applies to the VPT systems. These provisions will provide greater administrative latitude to processors and distributors participating in the program and enhance program operations.

EFFECTIVE DATE: This interim final rule is effective September 2, 1988.

FOR FURTHER INFORMATION CONTACT: George C. Rogers, Chief, Special Operations Branch, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive—Room 602, Alexandria, Virginia 22302, or telephone (703) 756–3888.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), information collection requirements contained in the current interim rules have been approved by the Office of Managment and Budget (OMB #0584–0325) for use through September 30, 1990.

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.based enterprises to compete with foreign-based enterprises in domestic or export markets.

Permitting processors to credit a distributor's account and use other types of value-pass-through systems will enhance program operations. In order for these procedures to be effective for the 1988–89 school year, this rule must be made effective upon publication, since the majority of processing contracts are negotiated prior to the beginning of the school year. This rule relieves restrictions concerning the use of value-pass-through systems. For this reason, in accordance with 5 U.S.C. 553(d), this rule is made effective less than 30 days after publication.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. for the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

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

Background

On March 7, 1988 the Department published a proposed rule in the **Federal Register** (53 FR 7188–7194) to amend the National Commodity Processing (NCP) Program Regulations to provide for increased State responsibilities, increase the flexibility provided under some processor requirements, and increase uniformity between provisions governing the NCP Program and State processing activities (Part 250).

This interim rule addresses only those provisions that relate to alternative value-pass-through (VPT) systems and the crediting of a distributor's account for the value of the donated foods contained in an end product. In an effort to enhance processing activities for the 1988–89 agreement year, these provisions are being implemented separately. Provisions regarding sales verification, and products reporting requirements, recipient agency masterfile, processor listings, State agency agreements and audits will be finalized at a later date. At that time, Part 252 will also be restructured and issued as a final rule.

Analysis of Comments

A total of 53 comment letters were received in response to the proposed regulations. Comments were received from processors, distributors, recipient agencies, private consultants State agencies, and other interested parties such as the American School Food Service Association, National Association of State Agencies for Food Distribution, National Frozen Pizza Institute and the California School Food Service Association.

Definition of Refund Payments

Under the proposed rule of March 7, 1988, a definition of "Refund' was incorporated in § 252.2 which would permit a processor to credit a distributor's account rather than issue individual checks for refund applications.

Eight of the commentors were in favor of this provision, three were opposed, and one was in support as long as the processor could choose whether the credit was offered as an alternative to a check.

Of the negative responses, two processors were concerned that distributors might "take" credit before the reports of sales are sent into the processor. Although the credit memo will now be available as an option, the regulatory provisions requiring a refund application and documentation will continue to apply. One State agency had the misconception that this refund alternative could apply to recipient agencies. The credit is available only for transactions between the processors and distributors. Since recipient agencies would be unacceptably constrained to continue purchasing

products from a processor/distributor under a credit system, the Department did not propose the availability of such a system for recipient agency transactions. The majority of the commentors who supported this provision support the use of the credit refund system because the proposed change would decrease the paperwork burden for processors.

The Department also wishes to emphasize that processors are not required to offer credit as a refund option to a distributor unless they are satisfied with the business relationship they have established with their distributors. As stated in the preamble to the proposed rule, the NCP Program experience has established that all VPT systems through a distributor need firmly established contractual relationships between processor (who are obligated to FNS) and their distributors.

The Department continues to support the use of a valve-pass-through system which provides refunds to distributors. Thus, since commentors confirmed that permitting a processor to credit a distributor's account rather than issue checks for the value of the donated food contained in an end products sold by the distributor will reduce the paperwork burden for processors while maintaining accountability, the definition of "Refund" as proposed is being incorporated in § 252.2 of this interim rule.

Value-Pass-Through Systems

Under the proposed rule, processors would be permitted to use value-pass-through (VPT) systems that are not explicitly described by the regulations, but which have been approved by FNS.

Eleven respondents supported this provision as an opportunity for innovation, should such a system be independently developed by a program participant. Of the eight commentors conditionally favoring this provision, most wanted the "other" VPT system to undergo careful testing before approval. Additionally, the majority of comments conditionally approving this provision wanted no net sales through a distributor systems to be permitted as an "other" VPT system. Of the twelve respondents opposing this provision, all felt it would lead to encouraging net sales through a distributor—a VPT system thought to increase paperwork, result in poor sales verification, and be a difficult VPT system to monitor.

As discussed in the proposed regulations, the only permissible alternative VPT systems would be those approved by FNS. The Department would only approve those alternative VPT systems that demonstrate a degree of accountability that is at least equal to that of the refund system. To ensure accountability, any alternate system will be made subject to sales verification.

The Department recognizes that the concerns raised have merit. However, the Department is concerned about meeting the needs of recipient agencies. The approval of an alternative VPT system, such as a net sales through a distributor system, will be contingent on whether it is determined to be as accountable as a refund system and the Department will evaluate all such systems closely. In addition, in light of the concerns expressed, the Department will ensure that such systems permit easy monitoring by all responsible parties and do not entail a significant increase in oversight activities by FNS staff. The Department feels that implementation of the provision is a viable means of encouraging the development and use of innovative VPT systems. Thus § 252.4(c) is revised in this interim rule as proposed.

List of Subjects in 7 CFR Part 252

Aged, Agriculture communities, Business and industry, Food assistance processing, Grant programs-social programs, Infant and children price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 252 is amended as follows:

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416, Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 252.2, Definitions, a definition for "Refund" is added in alphabetical order to read as follows:

§ 252.2 Definitions.

* * * * *

"Refund" means (1) a credit or check issued to a distributor in an amount equal to the NCP contract value of donated foods contained in an end product sold by the distributor to a recipient agency at a discounted price or (2) a check issued to a recipient agency in an amount equal to the NCP contract value of donated foods contained in an end product sold to the recipient agency under a refund system.

* * * * *

3. In § 252.4, paragraph (c)(4)(iii) is added to read as follows:

§ 252.4 Application to participate and agreement.

* * * * *

(c) * * *

(4) * * *

(iii) *Other value pass-through systems.* Processors may submit to FNS for approval any proposed value pass-through (VPT) system not identified in this section. The "other" VPT system must, in the judgment of FNS, be verifiable and easily monitored. Any VPT system approved under this Part must comply with the sales verification requirements specified in paragraph (c)(4)(ii)(B) of this section or an alternative system approved by FNS. If an alternative system is approved, FNS will notify the States in which the system will be used. The Department retains the authority to inspect and review all pertinent records under all VPT systems, including the verification of a required statistically valid sample of sales.

* * * * *

Anna Kondratas,

Administrator.

Date: August 29, 1988.

[FR Doc. 88-20042 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

[Docket No. 88-094]

7 CFR Part 301

Gypsy Moth Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Gypsy Moth Quarantine and Regulations by (1) removing all regulated areas in Illinois, Indiana, Minnesota, Washington, and Wisconsin from the list of regulated areas and removing these states from quarantined status; (2) removing regulated areas in Ohio from the list of gypsy moth low-risk areas and correcting an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth; (3) removing a portion of a previously regulated gypsy moth high-risk area in Oregon and redesignating the remaining portion of the regulated area as a gypsy moth low-risk area; (4) designating previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas; and (5) designating previously nonregulated areas in Virginia and West Virginia as gypsy

moth high-risk areas and redesignating areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas. The regulations restrict the interstate movement of certain articles from gypsy moth high-risk and low-risk areas. This rule is necessary to prevent the spread of gypsy moth and to remove unnecessary restrictions on the interstate movement of certain articles.

DATES: Interim rule effective September 2, 1988. Consideration will be given only to comments postmarked or received on or before November 1, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC, 20090–6464. Please state that your comments refer to Docket Number 88–094. Comments may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Sidney Cousins, Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest trees. The Gypsy Moth Quarantine and Regulations (contained in 7 CFR 301.45 *et seq.*, and referred to below as the regulations), quarantine certain states because of the gypsy moth, and restrict the interstate movements from regulated areas of certain articles to prevent the artificial spread of the gypsy moth.

Areas designated as gypsy moth regulated areas are those in which a gypsy moth infestation has been found by an inspector, or areas regulated because of the proximity to gypsy moth infestation or inseparability for quarantine enforcement purposes from infested localities. Regulated areas are divided into high-risk areas and low-risk areas. Under the regulations an area is designated as a high-risk area when an inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where an inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. Low-risk areas are those portions of regulated areas that are not designated as high-risk areas.

Section 301.45–3 of the regulations imposed the following conditions on the movement of regulated articles from gypsy moth regulated areas:

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such articles in accordance with §§ 301.45–4 and 301.45–7.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identity has been maintained, and they have been safeguarded against infestation while in any high-risk area.

Section 301.45–11 of the regulations imposes the following conditions on the interstate movement of outdoor household articles from gypsy moth high-risk areas:

(a) No outdoor household article shall be moved interstate from a gypsy moth high-risk area into or through any nonregulated area unless:

(1) Such outdoor household article is free from all life stages of the gypsy moth at the time of the interstate movement; or

(2) Such outdoor household article is accompanied by an OHA document issued by a qualified certified applicator in accordance with the provisions of §§ 301.45–12 and 301.45–13 within five calendar days of the interstate movement from a gypsy moth high-risk area; or

(3) Such outdoor household articles are brought in by vacationers to the gypsy moth high-risk areas.

These regulations are designed to restrict the interstate movement of regulated articles in those circumstances where there would be a significant risk of spread of gypsy moth. A certificate or limited permit is authorized to be issued based on treatment of a regulated article or based on a determination that movement of a regulated article without treatment would not result in the spread of the gypsy moth.

Deletion of Areas From List of Regulated Areas and Removal of States From Quarantine

We made several changes to the Gypsy Moth Quarantine and Regulations in an interim rule published in the **Federal Register** on May 8, 1986 (51 FR 16993–17001, Docket No. 85–343). The addition of Illinois, Indiana, Minnesota, Ohio, and Wisconsin to the list of states quarantined because of the gypsy moth was explained in the supplementary information of the May 8, 1986, document. Although that document amended § 301.45–2a of the regulations by designating portions of these states as low-risk areas, the designation of these states as quarantined states was inadvertently omitted from the list of quarantined states in § 301.45. However, for all practical purposes, these states have been treated as quarantined states.

Prior to the effective date of this document, the following areas in Illinois, Indiana, Minnesota, Ohio, Washington and Wisconsin were designated as gypsy moth low-risk regulated areas. This document removes these areas from the list of gypsy moth low-risk areas:

Illinois

Kane County. SE¼ sec. 3 and NE¼ sec. 10, T. 39 N., R. 8 E.

Lake County. SE¼ sec. 28, T. 43 N., R. 10 E.

Peoria County. Sec. 28, T. 9 N., R. 8 E.

Indiana

Allen County. SE¼ sec. 32, T. 30 N., R. 13 E.

Marion County. SE¼ sec. 20. T. 17 N., R. 3 E.

Minnesota

Dakota County. NW¼ sec. 21, T. 115 N., R. 20 W; NE¼ sec. 16, T. 115 N, R. 20 W; and NE¼ sec. 18, T. 114 N., R. 20 W.

Ohio

Allen County. S½ sec. 9, T. 3 S., R. 5 E.

Lucus County. That portion of the city of Sylvania bounded by a line beginning at the intersection of the Michigan-Ohio state line and Flanders Road; then south along said road to Janet Avenue; then west along Janet Avenue to its intersection with Artwell Drive; then north along Artwell Drive to its intersection with the Michigan-Ohio state line; then east along said state line to the point of beginning.

Darke County. That portion of Richland Township bounded by a line beginning at the intersection of Reed Road and Greenville-Celina Road; then south along Greenville-Celina to its

intersection with Union City Road; then west along said road to its intersection with Kesler-Byard Road; then north along said road to its intersection with Reed Road; then east along said road to the point of beginning.

Wayne County. E½ sec. 23 and W½ sec. 24, T. 16 N., R. 13 W.

Washington

Clark County. That portion of the county bounded by a line beginning at a point where NE 29th Avenue and 179th Street NE intersect; then easterly along 179th Street NE to its intersection with NE 72nd Avenue; then southerly on NE 72nd Avenue to its intersection with 160th Street NE; then westerly on 160th Street NE to its intersection with NE 29th Avenue; then northerly on NE 29th Avenue to the point of beginning.

Kitsap County. The entire county.

Whatcom County. That portion of the county bounded by a line beginning at a point where the Skagit-Whatcom County line intersects the Bellingham-Samish Bays; then easterly along said line to its intersection with State Highway 9; then northerly along said highway to its intersection with State Highway 542; then westerly from said intersection along an imaginary line to its intersection with the easterly most point of Gushen Road; then westerly along Gushen Road to its intersection with Axton Road to its intersection with the Nooksack River; then southerly along the Nooksack River to Bellingham Bay; then southerly along Bellingham Bay to the point of beginning.

Wisconsin

Dane County. Sec. 17, T. 7 N., R. 10 E.

Washington County. Sec. 15 T. 9 N., R. 19 E.

Based on treatments with insecticides and subsequent negative surveys in accordance with the quarantine and regulations, it has been determined that the gypsy moth no longer occurs in the above-described areas or in the area released from quarantine in Lane County, Oregon, as explained below. Accordingly, there is no longer a basis for continuing to list these areas as regulated areas for the purpose of preventing the artificial spread interstate of gypsy moth. Therefore, as an emergency measure, it is necessary to delete these areas from the list of regulated areas in order to delete unnecessary restrictions on the movement of gypsy moth regulated articles.

Further, the effect of deleting the above-described areas in Illinois, Indiana, Minnesota, Wisconsin and Washington from the list of gypsy moth regulated areas is to remove all areas in these states from the list of regulated areas. As a result, there is no longer a basis for quarantining Illinois, Indiana, Minnesota, Wisconsin or Washington for gypsy moth. Therefore, insofar as Illinois, Indiana, Minnesota, and Wisconsin were quarantined, this document releases them from quarantine. This document also deletes Washington from the list of States quarantined because of gypsy moth in § 301.45(a). Ohio is not released from quarantine because previously nonregulated areas are designated as low-risk areas, as explained below. This document corrects an earlier omission by adding Ohio to the list of states quarantined because of gypsy moth.

Removal and Redesignation of Portions of Regulated Area in Lane County, Oregon; Designation of Areas as Low Risk Areas

Prior to the effective date of this document, a portion of Lane County, Oregon, was designated as a gypsy moth high-risk area. This document removes a portion of the previously regulated area from quarantine and redesignates the remaining regulated area as a gypsy moth low-risk area. The newly designated low-risk area in Lane County, Oregon, is as follows:

Oregon

Lane County. That portion beginning at the northwest corner of sec. 15, T. 17 S., R. 6 W.; then due east along the section lines to the intersection of the north boundary of sec. 15, T. 17 S., R. 3 W. and Interstate 5; then north along Interstate 5 to its intersection with Coburg Road; then northwest along this road to its intersection with Powerline Road; then north along this road to its intersection with the north border of sec. 7, T. 16 S., R. 3 W.; then due east along the section lines to the northeast corner of Section 7, T. 16 S., R. 2 W.; then due south along the section lines to the southeast corner of sec. 31, T. 16 S., R. 2 W.; then due east along the section lines to the northeast corner of sec. 5, T. 17 S., R. 1 E.; then due north along the section lines to the northwest corner of sec. 21, T. 16 S., R. 1 E.; then due east along the section lines to the northeast corner of sec. 20, T. 16 S., R. 2 E.; then due south along the section lines to the southeast corner of sec. 20, T. 17 S., R. 2 E.; then due west along the section lines to the southwest corner of sec. 23, T. 17 S., R. 1 E.; then due south along the section lines to the southeast corner of sec. 10, T. 20 S., R. 1 E.; then due west along the section lines to the southwest corner of sec. 9, T. 20 S., R. 2 W.; then due south along the section lines to the intersection of the east border of sec. 32, T. 20 S., R. 2 W. and Row River Road; then west along this road to Dorena Dam; then south along Dorena Dam spillway to a point intersecting the south boundary of sec. 32, T. 20 S., R. 2 W.; then due west along the section lines to the southwest corner of sec. 34, T. 20 S., R. 5 W.; then due north along the section lines to the northwest corner of sec. 10, T. 20 S., R. 5 W.; then due east along the section lines to the northeast corner of sec. 9, T. 20 S., R. 3 W.; then due north along the section lines to the northwest corner of sec. 27, T. 18 S., R. 3 W.; then due west along the section lines to the southwest corner of sec. 20, T. 18 S., R. 4 W.; then due north along the section lines to the northwest corner of sec. 5, T. 18 S., R. 4 W.; then due west along the section lines to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due north along the section lines to the starting point.

This document also designates previously nonregulated areas in Maine, Maryland, Michigan, and Ohio as gypsy moth low-risk areas. These newly designated low-risk areas are the following:

Maine

Penobscot County. The townships of Sherman and Stacyville.

Maryland

The entire counties of Calvert, Charles, St. Marys, and Somerset.

Michigan

The entire counties of Alcona, Allegan, Alpena, Antrim, Barry, Benzie, Berrien, Cass, Charlevoix, Cheboygan, Crawford, Emmet, Grand Traverse, Hillsdale, Kalamazoo, Kalkaska, Kent, Lake, Leelamau, Manistee, Mason, Monroe, Montmorency, Muskegon, Oceana, Oscoda, Otsego, Ottawa, Presque Isle, St. Joseph, Van Buren, and Wexford.

Ohio

The entire counties of Ashtabula, Geauga, Lake, and Trumbull.

Based on recent surveys, inspectors have determined that infestations of gypsy moth occur in these areas designated as gypsy moth low-risk areas, but that the number of egg masses per acre is not high enough to meet the criteria referred to above for gypsy moth high-risk areas.

The restrictions concerning the gypsy moth are imposed on movements of regulated articles from gypsy moth low-risk areas only if it is determined by an inspector that any life stage of the gypsy moth is on the regulated article, and the person in possession thereof has been

notified by an inspector, unless a certificate or permit has been issued and attached to the regulated article in accordance with §§ 301.45–4 and 301.45–7 of the regulations. It is necessary to designate these areas as gypsy moth low-risk areas in order to advise persons of the likelihood that inspectors would conduct inspections in these areas and that, based on their findings of life stages of gypsy moth, restrictions could apply to the movement of regulated articles from the areas.

Designation of Areas as High-Risk Areas

This document designates previously nonregulated areas in Virginia and West Virginia as gypsy moth high-risk areas and redesignates areas in Michigan, New York, Pennsylvania, and Virginia from gypsy moth low-risk areas to gypsy moth high-risk areas. These areas are indicated below. If a portion of a county is designated, the specific area is set forth in the regulations portion of this document.

Michigan

The entire counties of Arenac, Bay, Genesee, Gladwin, Gratiot, Huron, Iosco, Lapeer, Mecosta, Missaukee, Montcalm, Ogemaw, Osceola, Roscommon, Saginaw, Sanilac, Shiawassee, St. Clair, and Tuscola; and

Portions of Clare, Isabella, Midland, and Oakland counties.

New York

The entire counties of Genesee, Lewis, Niagara, Orleans, Wayne, and Wyoming; and

Portions of Cayuga, Chenango, Cortland, Erie, Jefferson, Livingston, Madison, Oneida, Onondaga, Ontario, Oswego, Seneca, and St. Lawrence counties.

Pennsylvania

The entire counties of Armstrong, Crawford, and Fayette.

Virginia

The entire cities of Charlottesville, Chesapeake, Fredericksburg, Hampton, Harrisonburg, Manassas Park, Newport News, Norfolk, Poquoson, Portsmouth, Virginia Beach, and Waynesboro; and

The entire counties of Accomack, Albemarle, Augusta, Caroline, Culpeper, Fluvanna, Gloucester, Goochland, Greene, Hanover, Henrico, King George, Lancaster, Louisa, Madison, Mathews, Middlesex, Northampton, Northumberland, Orange, Powhatan, Richmond, Rockingham, Spotsylvania, Stafford, Westmoreland, and York; and

Portions of Augusta, Fauquier, Page, and Rappahannock Counties.

West Virginia

The entire counties of Barbour, Grant, Hampshire, Hardy, Mineral, Monongaiia, Pendleton, Preston, and Tucker.

Based on recent surveys, inspectors have determined with respect to all of the areas added to the list of gypsy moth high-risk areas, that defoliation has occurred in these areas because of the gypsy moth or that there is reason to believe that 50 or more egg masses per acre of the gypsy moth are present in these areas. Also, outdoor household articles and regulated articles exist within or adjacent to these areas. Accordingly, there is a substantial risk of artificially spreading the gypsy moth by unrestricted interstate movement of these articles. Therefore, as an emergency measure, it is necessary to designate these areas as gypsy moth high-risk areas and impose restrictions on the interstate movement of outdoor household articles and regulated articles from these areas in accordance with the regulations in order to prevent the artificial spread of the gypsy moth.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this rule without prior opportunity for public comment. Because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where gypsy moth no longer occurs, or when there is reason to believe that the density of egg masses per acre has decreased sufficiently to remove the area from a gypsy moth high-risk or low-risk area classification, immediate action is needed to remove unnecessary restrictions on the interstate movement of regulated articles.

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

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individuals, industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action affects the interstate movement of regulated articles from gypsy moth regulated areas in Illinois, Indiana, Maine, Maryland, Michigan, Minnesota, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, West Virginia, and Wisconsin. For areas designated as high-risk areas, individual and commercial movers moving outdoor household articles to areas outside the quarantined area must determine that their articles are free of gypsy moth. Mobile home haulers, loggers, nurserymen, and firewood haulers are required to obtain certification or limited permit from an inspector that their articles are free of gypsy moth. For areas designated as low-risk areas, the same conditions apply for movement of regulated articles when it is determined by an inspector that the movement of an article presents a hazard of spreading the gypsy moth. For areas determined to be free of gypsy moth and deregulated, no restrictions are imposed for movement of regulated articles.

All regulated articles are inspected and certified without charge to the business. A business not requesting this service in advance of shipment may be delayed in moving the product until service can be provided. A homeowner moving outdoor household articles from a high-risk area to an uninfested area may pay a qualified certified applicator (QCA) to inspect his goods. These charges average between $50–100. In some instances the company moving that person reimburses the mover for their expense. Most QCA's are small businesses. By declaring an area as a high-risk area the regulations may

increase business for the QCA's located in high-risk areas. These businesses will average $50 to $150 per month in additional income per business. Approximately 90 new businesses will be trained to inspect outdoor household articles and will offer this service to the general public. Based on information compiled by the U.S. Department of Agriculture it has been determined that there are many hundreds of small entities that move regulated articles interstate from gypsy moth regulated areas and many thousands of small entities that move regulated articles interstate from other states. However, based on such information, it has been determined that approximately 759 small entities move regulated articles interstate from the specified areas affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Gypsy Moth.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended as follows:

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

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

§ 301.45 [Amended]

2. Section 301.45(a) is amended by adding "Ohio" immediately after "New York" and by removing the reference to "Washington".

3. Section 301.45–2a is revised to read as follows:

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The areas designated below are designated as gypsy moth regulated areas, and such regulated areas are divided into high-risk areas or low-risk areas as follows:

Connecticut

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Delaware

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

District of Columbia

(1) *High-risk area.* The entire district.
(2) *Low-risk area.* None.

Maine

(1) *High-risk area.*

Androscoggin County. The entire county.

Cumberland County. The entire county.

Franklin County. The townships of Avon, Carthage, Chesterville, Farmington, Industry, Jay, New Sharon, New Vineyard, Perkins, Strong, Temple, Washington, Weld, and Wilton.

Hancock County. The entire county.

Kennebec County. The entire county.

Knox County. The entire county.

Lincoln County. The entire county.

Oxford County. The townships of Albany, Batchelders Grant, Bethel, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hanover, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Mexico, Milton Plantation, Norway, Oxford, Paris, Peru, Porter, Rumford, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.

Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Charleston, Clifton, Corinna, Cornith, Dexter, Dixmont, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Hampden, Hermon, Holden, Howland, Hudson, Kenduskeag, La Grange, Levant, Lincoln, Lowell, Mattamiscontis, Maxfield, Milford, Newburg, Newport, Old Town City, Orono, Orrington, Pasadumkeag, Plymouth, Stetson, Summit, Veazie-Eddington, and 1 ND.

Piscataquis County. The townships of Atkinson, Medford, Milo, and Orneville.

Sagadahoc County. The entire county.

Somerset County. The townships of Anson, Athens, Cambridge, Canaan, Cornville, Detroit, Embden, Fairfield, Harmony, Hartland, Madison, Mercer, New Portland, Norridgewock, Palmyra, Pittsfield, Ripley, Skowhegan, Smithfield, Solon, St. Albans, and Starks.

Waldo County. The entire county.

Washington County. The townships of Addison, Beals, Beddington, Centerville, Cherryfield, Columbia, Columbia Falls, Crawford, Deblois, East-Machias, Harrington, Jonesborro, Jonesport, Machias, Machiasport, Marshfield, Milbridge, Northfield, Rouge Bluffs, Steuben, Wesley, Whitneyville, 5 ND, 18 ED, 18 MD, 19 ED, 19 MD, 24 MD, 25 MD, 26 ED, 27 ED, 29 MD, 30 MD, 31 MD, 36 MD, 37 MD, 42 MD, and 43 MD.

York County. The entire county.

(2) *Low-risk area.*

Aroostook County. The townships of Bancroft, Benedicta, Macwahoc Plantation, Molunkus, North Yarmouth Academy Grant, Reed Plantation, Silver Ridge, Upper Molunkus, Weston, and 1 R5 WELS.

Franklin County. The townships of Crockertown, Dallas Plantation, Freeman, Jerusalem, Kingfield, Madrid, Mount Abraham, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, 6, E. and D.

Oxford County. The townships of Andover, Andover North, Andover West, Bryon, Gilead, Grafton, Magalloway Plantation, Newry, Richardsontown, Riley, Roxbury, Upton, C, and C Surplus.

Penobscot County. The townships of Carroll Plantation, Chester, Drew Plantation, E. Millinocket, Grindstone, Hersey Town, Hopkins Academy Grant, Indian Purchase, Kingman, Lakeville, Lee, Long A, Mattawamkeag, Medway, Millinocket, Prentiss Plantation, Seboeis Plantation, Sherman, Soldiertown, Springfield, Stacyville, Webster Plantation, Winn, Woodville, Veazie Gore, AR 7, AR 8 & 9, 3 R1, R6 WELS, 1 R8 WELS, 2 R8 WELS, 2 R8 NWP, 2 R9 NWP, 3 R9 NWP, and 5 R1 NBPP.

Piscataquis County. The townships of Abbott, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Guilford, Kingsbury Plantation, Lakeview Plantation, Monson, Parkman, Sangeville, Sebec, Williamsburg, Willimantic, Willington, 1 R9, 2 R9 WELS, 4 R9 NWP, and 5 R9 NWP.

Somerset County. The townships of Bald Mountain, Bingham, Brighton Plantation, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Dead River, Highland Plantation, Lexington Plantation, Mayfield, Moscow, and Pleasant Ridge Plantation.

Washington County. The townships of Alexander, Baileyville, Baring, Brookton, Calais, Codyville Plantation, Cooper, Charlotte, Cutler, Danforth, Dennysville, Dyer, Eastport, Edmonds, Forest, Forest

City, Fowler, Grand Lake Stream Plantation, Indian, Kossuth, Lambert Lake, Lubec, Marion, Meddybemps, Pembroke, Perry, Princeton, Robbinston, Talmadge, Topsfield, Trescott, Vanceboro, Waite, Whiting, Plantation 14, Plantation 21, 6 R1 NBPP, 6 NDBPP, 8 R3 NBPP, 8 R4 NBPP, 11 R3 NBPP.

Maryland

(1) *High-risk area.*
Allegany County. The entire county.
Baltimore City. The entire county.
Baltimore County. The entire county.
Caroline County. The entire county.
Carroll County. The entire county.
Cecil County. The entire county.
Frederick County. The entire county.
Garrett County. The entire county.
Harford County. The entire county.
Howard County. The entire county.
Kent County. The entire county.
Montgomery County. The entire county.
Queen Annes County. The entire county.
Washington County. The entire county.
(2) *Low-risk area.*
Anne Arundel County. The entire county.
Dorchester County. The entire county.
Calvert County. The entire county.
Charles County. The entire county.
Prince Georges County. The entire county.
St. Marys County. The entire county.
Somerset County. The entire county.
Talbot County. The entire county.
Wicomico County. The entire county.
Worecester County. The entire county.

Massachusetts

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Michigan

(1) *High-risk area.*
Arenac County. The entire county.
Bay County. The entire county.
Clare County. The entire county.
Genesee County. The entire county.
Gladwin County. The entire county.
Gratiot County. The entire county.
Huron County. The entire county.
Iosco County. The entire county.
Isabella County. The entire county.
Lapeer County. The entire county.
Mecosta County. The entire county.
Midland County. The entire county.
Missaukee County. The entire county.
Montcalm County. The entire county.
Oakland County. The entire county.
Ogemaw County. The entire county.
Osceola County. The entire county.
Roscommon County. The entire county.
Saginaw County. The entire county.
Sanilac County. The entire county.
Shiawassee County. The entire county.
St. Clair County. The entire county.
Tuscola County. The entire county.
(2) *Low-risk area.*
Alcona County. The entire county.
Allegan County. The entire county.
Alpena County. The entire county.
Antrim County. The entire county.
Barry County. The entire county.
Benzie County. The entire county.
Berrien County. The entire county.
Branch County. The entire county.
Calhoun County. The entire county.
Cass County. The entire county.
Charlevoix County. The entire county.
Cheboygan County. The entire county.
Clinton County. The entire county.
Crawford County. The entire county.
Eaton County. The entire county.
Emmet County. The entire county.
Grand Traverse County. The entire county.
Hillsdale County. The entire county.
Ingham County. The entire county.
Ionia County. The entire county.
Jackson County. The entire county.
Kalkaska County. The entire county.
Kalamazoo County. The entire county.
Kent County. The entire county.
Lake County. The entire county.
Leelanau County. The entire county.
Lenawee County. The entire county.
Livingston County. The entire county.
Macomb County. The entire county.
Manistee County. The entire county.
Mason County. The entire county.
Monroe County. The entire county.
Montmorency County. The entire county.
Muskegon County. The entire county.
Newaygo County. The entire county.
Oceana County. The entire county.
Oscoda County. The entire county.
Otsego County. The entire county.
Ottawa County. The entire county.
Presque Isle County. The entire county.
St. Joseph County. The entire county.
Van Buren County. The entire county.
Washtenaw County. The entire county.
Wayne County. The entire county.
Wexford County. The entire county.

New Hampshire

(1) *High-risk area.*
Belknap County. The entire county.
Carroll County. The entire county.
Cheshire County. The entire county.
Grafton County. The entire county.
Hillsboro County. The entire county.
Merrimack County. The entire county.
Rockingham County. The entire county.
Strafford County. The entire county.
Sullivan County. The entire county.
(2) *Low-risk area.*
Coos County. The entire county.

New Jersey

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

New York

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Ohio

(1) *High-risk area.* None.
(2) *Low-risk area.*
Ashtabula County. The entire county.
Geauga County. The entire county.
Lake County. The entire county.
Trumbull County. The entire county.

Oregon

(1) *High-risk area.* None.
(2) *Low-risk area.*
Lane County. That portion beginning at the northwest corner of sec. 15, T. 17 S., R. 6 W.; then due east along the section lines to the intersection of the north boundary of sec. 15, T. 17 S., R. 3 W. and Interstate 5; then north along Interstate 5 to its intersection with Coburg Road; then northwest along this road to its intersection with Powerline Road; then north along this road to its intersection with the north border of sec. 7, T. 16 S., R. 3 W.; then due east along the section lines to the northeast corner of Section 7, T. 16 S., R. 2 W.; then due south along the section lines to the southeast corner of sec. 31, T. 16 S., R. 2 W.; then due east along the section lines to the northeast corner of sec. 5, T. 17 S., R. 1 E.; then due north along the section lines to the northwest corner of sec. 21, T. 16 S., R. 1 E.; then due east along the section lines to the northeast corner of sec. 20, T. 16 S., R. 2 E.; then due south along the section lines to the southeast corner of sec. 20, T. 17 S., R. 2 E.; then due west along the section lines to the southwest corner of sec. 23, T. 17 S., R. 1 E.; then due south along the section lines to the southeast corner of sec. 10, T. 20 S., R. 1 E.; then due west along the section lines to the southwest corner of sec. 9, T. 20 S., R. 2 W.; then due south along the section lines to the intersection of the east border of sec. 32, T. 20 S., R. 2 W. and Row River Road; then west along this road to Dorena Dam; then south along Dorena Dam spillway to a point intersecting the south boundary of sec. 32, T. 20 S., R. 2 W.; then due west along the section lines to the southwest corner of sec. 34, T. 20 S., R. 5 W.; then due north along the section lines to the northwest corner of sec. 10, T. 20 S., R. 5 W.; then due east along the section lines to the northeast corner of sec. 9, T. 20 S., R. 3 W.; then due north along the section lines to the northwest

corner of sec. 27, T. 18 S., R. 3 W.; then due west along the section lines to the southwest corner of sec. 20, T. 18 S., R. 4 W.; then due north along the section lines to the northwest corner of sec. 5, T. 18 S., R. 4 W.; then due west along the section lines to the southwest corner of sec. 34, T. 17 S., R. 6 W.; then due north along the section lines to the starting point.

Pennsylvania

(1) *High-risk area.*
Adams County. The entire county.
Armstrong County. The entire county.
Bedford County. The entire county.
Berks County. The entire county.
Blair County. The entire county.
Bradford County. The entire county.
Bucks County. The entire county.
Cambria County. The entire county.
Cameron County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clarion County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Crawford County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Elk County. The entire county.
Fayette County. The entire county.
Forest County. The entire county.
Franklin County. The entire county.
Fulton County. The entire county.
Huntingdon County. The entire county.
Indiana County. The entire county.
Jefferson County. The entire county.
Juniata County. The entire county.
Lackawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
McKean County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Philadelphia County. The entire county.
Pike County. The entire county.
Potter County. The entire county.
Schuylkill County. The entire county.
Snyder County. The entire county.
Somerset County. The entire county.
Sullivan County. The entire county.
Susquehanna County. The entire county.
Tioga County. The entire county.
Union County. The entire county.
Venango County. The entire county.
Warren County. The entire county.
Wayne County. The entire county.
Westmoreland County. The entire county.
Wyoming County. The entire county.
York County. The entire county.
(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire state.
(2) *Low-risk area.* None.

Vermont

(1) *High-risk area.*
Addison County. The entire county.
Bennington County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Rutland County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.
(2) *Low-risk area.*
Caledonia County. The entire county.
Essex County. The entire county.
Lamoille County. The entire county.
Orange County. The entire county.
Orleans County. The entire county.
Washington County. The entire county.

Virginia

(1) *High-risk area.*
City of Alexandria. The entire city.
City of Charlottesville. The entire city.
City of Chesapeake. The entire city.
City of Fairfax. The entire city.
City of Falls Church. The entire city.
City of Fredericksburg. The entire city.
City of Hampton. The entire city.
City of Harrisonburg. The entire city.
City of Manassas. The entire city.
City of Manassas Park. The entire city.
City of Newport News. The entire city.
City of Norfolk. The entire city.
City of Poquoson. The entire city.
City of Portsmouth. The entire city.
City of Virginia Beach. The entire city.
City of Waynesboro. The entire city.
City of Winchester. The entire city.
Accomack County. The entire county.
Albemarle County. The entire county.
Arlington County. The entire county.
Augusta County. That portion of the county east of Interstate 81 and north of Interstate 64.
Caroline County. The entire county.
Clarke County. The entire county.
Culpeper County. The entire county.
Fairfax County. The entire county.
Fauquier County. The entire county.
Fluvanna County. The entire county.
Frederick County. The entire county.
Gloucester County. The entire county.
Goochland County. The entire county.
Greene County. The entire county.
Hanover County. The entire county.
Henrico County. The entire county.
King George County. The entire county.
Lancaster County. The entire county.
Loudon County. The entire county.
Louisa County. The entire county.
Madison County. The entire county.
Mathews County. The entire county.
Middlesex County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Orange County. The entire county.
Page County. The entire county.
Powhatan County. The entire county.
Prince William County. The entire county.
Rappahannock County. The entire county.
Richmond County. The entire county.
Rockingham County. The entire county.
Shenandoah County. The entire county.
Spotsylvania County. The entire county.
Stafford County. The entire county.
Warren County. The entire county.
Westmoreland County. The entire county.
York County. The entire county.
(2) *Low-risk area.* None.

West Virginia

(1) *High-risk area.*
Barbour County. The entire county.
Berkeley County. The entire county.
Grant County. The entire county.
Hampshire County. The entire county.
Hardy County. The entire county.
Jefferson County. The entire county.
Mineral County. The entire county.
Monongalia County. The entire county.
Morgan County. The entire county.
Pendleton County. The entire county.
Preston County. The entire county.
Tucker County. The entire county.
(2) *Low-risk area.* None.

Done in Washington, DC, on this 29th day of August, 1988.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20056 Filed 9-1-88; 8:45 am]
BILLING CODE 3410-34-M

[Docket No. 88-115]

7 CFR Part 354

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing, and adding, commuted traveltime allowances in North Carolina and Vermont. A commuted traveltime allowance is the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime.

This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Eggert, Director, National Administrative and Planning Operations Staff, PPQ, APHIS, USDA, Room 614, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7250.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, Chapter III, and 9 CFR, Chapter I, Subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the time required for a PPQ employee to travel from his/her dispatch point and return there from the place where he/she performs Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing, and adding, commuted traveltime allowances between certain locations in North Carolina and Vermont. (The amendments are set forth in the rule portion of this document.) This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12372

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

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by removing and adding, in alphabetical order, the information as shown below:

§354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
* * * * *			
North Carolina			
* * * * *			
Cherry Point	Kinston		3
Morehead City	Kinston		3
* * * * *			
Add:			
* * * * *			
Cherry Point	Goldsboro		4
Morehead City	Goldsboro		4
Raleigh	Raleigh	2	
Raleigh	Goldsboro		4
Raleigh	Clinton		4
* * * * *			
Remove:			
* * * * *			
Vermont			
* * * * *			
Burlington	Montpelier		2
* * * * *			
Add:			
* * * * *			
Burlington	Montpelier		3
* * * * *			

Done in Washington, DC, this 29th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-20058 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 41; Doc. No. 5948S]

General Crop Insurance Regulations; Malting Barley Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Friday, July 22, 1988, at 53 FR 27663, amending the General Crop Insurance Regulations (7 CFR Part 401) to revise and reissue the Malting Barley Option (7 CFR 401.135). In that publication, three errors have been noted with respect to: (1) An incorrect cross reference for the definition of two-rowed or six-rowed malting barley; (2) an incorrect reference regarding test weight per bushel of barley; and, (3) an inadvertent repetition of two sentences. This notice is published to correct those errors.

EFFECTIVE DATE: September 2, 1988.

ADDRESS: Written comments on this correction may be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: FR Document 88–16549, appearing at page 27664, is corrected as follows:

On page 27664, in Column 2, § 7.b. introductory text of 7 CFR 401.135, the Malting Barley Option, is correctly revised to read as follows:

§ 401.135 [Amended]

7. * * *

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see § 10.a.), will be adjusted by:

* * * * *

On page 27664, in Column 2, § 10.d. of 7 CFR 401.135, the Malting Barley Option, is correctly revised to read as follows:

10. * * *

d. *"Value per bushel"* for the insured malting barley means:

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of at least 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 85 percent sound barley; less than 8 percent damaged kernels; less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not meet all the standards in § 10.d.(1).

The local market price for basic barley as identified in § 10.d.(1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

* * * * *

Done in Washington, DC on August 25, 1988.

Edward D. Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 88–19946 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV–88–115]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Interim Nomination Procedures for the Navel and Valencia Orange Administrative Committees)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of interim nomination procedures for membership on the Navel and Valencia Orange Administrative Committees (committees). These committees are the administrative agencies responsible for local administration of the California-Arizona navel and Valencia orange marketing orders. The navel and Valencia orange marketing orders were recently amended. The Final Order Amending the Orders appears elsewhere in this issue of the **Federal Register.** The amendments changed the provisions of the marketing orders concerning the structure of the committees. The amendments included a change in the basis for industry representation on the committees and the use of the total volume of oranges disposed of in all outlets in the determination of nominating rights. Therefore, new nomination procedures are needed for each respective order to allow the nomination of new members to both committees. This interim final rule will allow the U.S. Department of Agriculture (Department) to conduct initial committee nominations using the interim procedures described herein.

These interim procedures will be used until the committees, with the approval of the Secretary, recommend additions to or modifications of these nomination procedures.

DATE: Interim final rule effective September 2, 1988. Comments which are received by November 1, 1988 will be considered prior to any finalization of this interim final rule.

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, Room 2085, South Building, P.O. Box 96456, 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: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal 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 California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], the information collection provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0116 and 0581–0212, respectively.

This interim final rule invites comments on the establishment of nomination procedures for membership on the committees. The navel and Valencia orange marketing orders were recently amended. The Final Order Amending the Orders appears elsewhere in this issue of the Federal Register. The amendments changed the provisions of the marketing orders concerning the structure of the committees. These committees are established under their respective marketing orders for the purpose of administering the navel and Valencia orange marketing order programs. The amendments included a limitation on tenure for members of the Valencia Administrative Committee (VOAC), a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, and the use of the total volume of oranges disposed of in all outlets in the determination of nominating rights. The amendments are expected to provide a more flexible framework for apportioning committee membership among segments of the industries based upon their relevant dominance in their respective industries.

The term of office of each member and alternate member of the committees is two years. Members are nominated and selected in each even-numbered year. The term of office for the current VOAC began February 1, 1988, and, for the Navel Orange Administrative Committee (NOAC) the next term of office will begin October 1, 1988. Therefore, a new NOAC should be in place by October 1 and a new VOAC should be selected by February 1, 1988. For these reasons, new nomination procedures for each order are necessary to allow the nomination of new members to the committees and, in particular, the NOAC.

Sections 907.22 and 908.22 of the navel and Valencia orange marketing orders, respectively, provide for nominations of members to the committees by procedures conducted by the Secretary. These sections describe a process whereby three types of nominating entities develop slates of candidates for nomination which may be voted on by the growers affiliated with such groups.

This interim final rule will allow the Department to conduct initial committee nominations using the procedures described below for the three types of nominating entities.

Nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year. For this nominating entity, its board of directors will develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the entity qualifies. The board of directors then has the option of nominating its slate of candidates or allowing the cooperative's growers to nominate its slate of candidates through mail balloting.

Nominating entity 2 is composed of groups of handlers who declare themselves to be nominating entities. These groups or coalitions may be a combination of cooperative handlers, cooperative and independent handlers, or solely independent handlers. After notification by the Department of the number of member positions available, each declared group of handlers must develop a slate of candidates for nomination containing, at a minimum, one eligible candidate for each member, alternate member, and additional alternate member for each position the entity qualifies. A handler may not participate as a member of more than one nominating entity. In addition, if a handler coalition fails to develop a slate of candidates, the growers affiliated with the handlers could nominate through write-in ballots. If a handler coalition forms but does not have the percentage necessary to be allocated a member position, the growers affiliated with the handlers could make nominations pursuant to provisions applicable to nominating entity 3.

The Department will use the slates of candidates for nomination developed by each declared group, for mail balloting among those growers who delivered their fruit to the handler or group of handlers which make up that declared group. Growers may receive more than one ballot if they delivered to more than one handler, but growers may vote for nominees of only one group of handlers regardless of the number of handlers to whom the growers delivered oranges. Growers should complete and mail in the ballot of that group of handlers with which the grower wishes to vote. In this way, growers are free to choose the slate of candidates they feel would best represent their interests. The Department will ensure that growers vote for only one slate of candidates. The board of directors of nominating entity 1 may choose to allow its growers to vote directly rather than to nominate by vote of its board of directors. Under those circumstances, the mail balloting procedure outlined above would apply to a grower vote of nominating entity 1 growers.

Nominating entity 3 is comprised of growers not affiliated with handlers in nominating entities 1 or 2. The Department will hold candidate selection meetings for nominating entity 3 growers in all districts of the production area. A slate of grower candidates will be developed at these meetings. Provision is also made for growers to propose candidates for nomination without attending the candidate selection meetings. Mail balloting will then be conducted by the Department.

As the first stage of the revised nomination procedures, the Department will notify all handlers of their percentage of total orange dispositions in the current fiscal (navels) or marketing (Valencias) year and the minimum percentages required to be allocated grower and/or handler members on the committees. Total dispositions to all outlets include, but are not limited to, by-products, animal feed, charitable donations, and exports in addition to fresh domestic shipments. During the current fiscal (navel) or marketing (Valencies) year, each handler will have handled a percent of

total orange dispositions and each nominating entity will be able to nominate one member, one alternate member and one additional alternate member, for each 10.0 percent of total orange dispositions attributable to such entity during the current fiscal (navels) or marketing (Valencies) year in which nominations are made. However, as provided in §§ 907.22(d) and 908.22(d) of the orders, the largest cooperative marketing organization (nominating entity 1) and nominating entity 2 declared groups of handlers are limited to a maximum of 5 members each, thus the 10.0 percent requirement would be reduced whenever the largest cooperative marketing organization (nominating entity 1) or a declared group of handlers (nominating entity 2) has more than 50 percent of total dispositions in the current fiscal (navels) or marketing (Valencies) year. For example, if both the largest cooperative marketing organization and the largest declared group of handlers each controlled less than 50 percent of total dispositions, Handler A's total dispositions of navel oranges are 3.0 percent, Handler B's, 5.0 percent, and Handler C's 20.0 percent, a declared group of handlers formed only of Handlers A, B, and C would have 28 percent of total orange dispositions during the current fiscal year and would be allocated 2 members, 2 alternate members and 2 additional alternate members to the committee. If the largest cooperative marketing organization or the largest group of handlers controlled more than 50 percent (for example, 58 percent) of total dispositions, then the percentage required for other nominating entities to nominate each member, plus an alternate member and additional alternate member for the remaining entities, is calculated as follows:

$$\frac{50\% - 8\%}{5} = 8.4\%$$

In the example suggested above, where the largest cooperative marketing organization or the largest group of declared handlers controlled 58 percent of total dispositions, Group D with 26 percent of total dispositions would receive 3 members, 3 alternatives, and 3 additional alternates; Group E with 9 percent would receive 1 member, 1 alternate, and 1 additional alternate; and Group F with 11 percent would also receive 1 member, 1 alternate, and 1 additional alternate.

The Department will request notifications by nominating entity 1 and nominating entity 2 declared groups of the handlers affiliated with such entities and a list of the growers affiliated with each handler. The nominating entity 1 cooperative or any declared nominating entity 2 cooperative which has a volume percentage such that it qualifies for member positions shall not have to provide the lists of handlers and growers if such entities' boards of directors choose to nominate their candidates through action of their boards. After receiving all grower lists, the Department will notify each nominating entity of the number of member positions it is allocated. If nominations for grower and handler member positions total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights. Thus, in the example where a nominating entity composed of Handlers A, B, and C has 28 percent of total orange dispositions and was eligible to nominate 2 members, 2 alternate members and 2 additional alternate members to the committee, this nominating entity had an 8 percent residual percentage. If there were 3 other nominating entities, with 40 percent, 22 percent and 10 percent of total dispositions, respectively, they would nominate 4 members, 4 alternate members and 4 additional alternate members; 2 members, 2 alternate members, and 2 additional alternate members; and 1 member, 1 alternate member, and 1 additional alternate member, respectively. Thus, there would be one member position with appropriate alternates still to be nominated, and the nominating entity with the largest residual percentage (in this example, the declared group made up of Handlers A, B, and C with an 8 percent residual percentage) would nominate this member.

After notification of the number of member positions authorized, each nominating entity (with the exception of nominating entity 3) will then develop a slate of candidates for nomination as described herein and submit such slate to the Department within one week of such notification.

Mail balloting will be conducted by the Department for growers affiliated with handlers in nominating entities 1 (if its board of directors so chooses), 2, and 3. After receipt of the slates of candidates developed by the nominating entities, a ballot will be sent to each grower in order that they may vote for candidate(s) developed by their respective nominating entity. Growers are entitled to cast only one vote on behalf of themselves, their agents, subsidiaries, affiliates, and representatives even though they may have delivered fruit to more than one declared handler or group of handlers. Growers who deliver oranges to handlers in more than one nominating entity, and who thus receive more than one ballot, must select the slate of candidates for whom they wish to vote and may vote for only one slate of candidates. Growers should complete and mail in the ballot of that nominating entity for which the grower wishes to vote. In addition, growers in all nominating entities may nominate qualified individuals other than those appearing on the ballot, by writing in such candidates' names on the mail ballots. The Department will tally the results of mail balloting of all entities. Candidates who receive the highest number of votes for each position will be presented to the Secretary for selection.

The above-described procedures will be utilized until the committees recommend to the Secretary additions to or modifications of these nomination procedures or the Department finds, through other sources, that such modifications are necessary.

After consideration of all available information, including the recently concluded amendatory proceedings relative to these orders, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The term of office for members of the NOAC begins October 1, 1988, and nomination procedures should be in place in order

for a new committee to be selected by that date; and, (2) handlers and producers are aware of the need for this action as the navel and Valencia orange industry as a whole, during the period June 21 through July 8, 1988, participated in producer referenda to amend the orders.

List of Subjects

7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, and Oranges.

7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, and Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended as follows: [*These sections will appear in the Code of Federal Regulations.*]

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Section 907.102 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers shall be notified by the Secretary of their percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made. For the purposes of forming nominating groups, the Secretary will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That a list containing the names and addresses of all growers who deliver oranges to such handlers shall also be submitted by each handler affiliated with a nominating entity whose members shall be nominated through a mail balloting procedure.

(2) Following the formation of all eligible nominating entities, the Secretary shall notify each such entity of the number of grower or handler members or both that each nominating entity is qualified to nominate, based on the total percentages of navel oranges disposed of in all outlets by all handlers in each nominating entity. This notification will also request nominating entities 1 and 2, pursuant to §§ 907.22 (a)(1) and (a)(2), to develop slates of candidates for nomination and submit such slates to the Secretary by a date specified in the notice. If a declared group of handlers (nominating entity 2) fails to develop a slate of candidates, the growers affiliated with handlers in such group may nominate through write-in ballots.

(3) Growers, pursuant to § 907.22(a)(3), and, if applicable, growers pursuant to § 907.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current fiscal year is not affiliated with nominating entities 1 and 2 and delivered navel oranges to handlers shall be eligible to vote for nominees pursuant to § 907.22(g).

(ii) For the purpose of selecting candidates for nomination, the Secretary shall hold meetings in all districts. Timely notice of such meetings shall be given by the Secretary to each eligible nominating entity 3 grower of record.

(iii) Candidates for nomination shall be selected at such meetings by submitting their names on a form approved by the Secretary and signed by at least 10 eligible growers.

(iv) Growers may propose candidates without attending a candidate selection meeting by submitting the names on a form approved by the Secretary, as specified in paragraph (a)(3)(iii) of this section, to the marketing field office and signed by at least 10 eligible growers. Such submission, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least five days prior to such date.

(v) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

(4) Following the submission of the slates of candidates by nominating entities 1, 2, and 3, the Secretary shall mail to all eligible growers of record (with the exception of growers whose cooperatives' boards of directors choose to nominate for their members) a ballot containing the names of the candidates for each available position. Growers receiving more than one ballot shall choose the slate of candidates for whom they wish to vote and may only vote for one slate of candidates. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. At the discretion of the Secretary, the ballots may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the Secretary deems appropriate.

(5) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent.

(6) The names of the persons receiving the highest total number of votes for a particular grower or handler position shall be submitted to the Secretary as the nominees for such positions.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Subpart—Rules and Regulations

2. Section 908.102 is revised to read as follows:

§ 908.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers shall be notified by the Secretary of their percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made. For the purposes of forming nominating groups, the Secretary will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: *Provided,* That a list containing the names and addresses of all growers who deliver oranges to such handlers shall also be submitted by each handler affiliated with a nominating entity whose members shall be nominated through a mail balloting procedure.

(2) Following the formation of all eligible nominating entities, the Secretary shall notify each such entity of the number of grower or handler

members or both that each nominating entity is qualified to nominate, based on the total percentages of Valencia oranges disposed of in all outlets by all handlers in each nominating entity. This notification will also request nominating entities 1 and 2, pursuant to § 908.22 (a)(1) and (a)(2), to develop slates of candidates for nominations and submit such slates to the Secretary by a date specified in the notice. If a declared group of handlers (nominating entity 2) fails to develop a slate of candidates, the growers affiliated with the handlers in such group may nominate through write-in ballots.

(3) Growers, pursuant to § 908.22(a)(3), and, if applicable, growers pursuant to § 908.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current marketing year is not affiliated with nominating entities 1 or 2 and delivered Valencia oranges to handlers shall be eligible to vote for nominees pursuant to § 908.22(g).

(ii) For the purpose of selecting candidates for nomination, the Secretary shall hold meetings in all districts. Timely notice of such meetings shall be given by the Secretary to each eligible nominating entity 3 grower of record.

(iii) Candidates for nomination shall be selected at such meetings by submitting their names on a form approved by the Secretary and signed by at least 10 eligible growers.

(iv) Growers may propose candidates without attending a candidate selection meeting by submitting the names on a form approved by the Secretary, as specified in paragraph (a)(3)(iii) of this section, to the marketing field office and signed by at least 10 eligible growers. Such submission, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least five days prior to such date.

(v) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

(4) Following the submission of the slates of candidates by nominating entities 1, 2, and 3, the Secretary shall mail to all eligible growers of record (with the exception of growers whose cooperatives' boards of directors choose to nominate for their members) a ballot containing the names of the candidates for each available position. Growers receiving more than one ballot shall choose the slate of candidates for whom they wish to vote and may only vote for one slate of candidates. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. At the discretion of the Secretary, the ballots may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the Secretary deems appropriate.

(5) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent.

(6) The names of the persons receiving the highest total number of votes for a particular grower or handler position shall be submitted to the Secretary as the nominees for such positions.

Dated: August 24, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-19992 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A9 & AO-250-A7, FV-88-103]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing orders for navel and Valencia oranges grown in Arizona and designated parts of California. The amendments change the provisions of the marketing orders concerning the structure of the Navel and Valencia Orange Administration Committees (committees). These committees are established under their respective marketing orders for the purpose of administering the programs. The amendments include a limitation on tenure for members of the Valencia Orange Administrative Committee, a change in the basis for industry representation on the committees, the inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of oranges disposed of in all outlets in the determination of nominating rights for membership on the committees, and conforming changes. In addition, a number of minor changes are made for clarity. The amendments will provide a more flexible framework for apportioning committee membership among segments of the industries, based on the relative dominance in the respective industries.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued June 4, 1986, and published in the June 6, 1986, issue of the **Federal Register** [51 FR 20664]; Recommended Decision issued June 1, 1987, and published in the June 8, 1987, issue of the **Federal Register** [52 FR 21546]; and Secretary's Decision and Referendum Order issued on June 6, 1988, and published in the June 9, 1988, issue of the **Federal Register** [53 FR 21651].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

Preliminary Statement

This final rule was formulated on the record of a public hearing held June 10-12, 1986, at Visalia, California to consider the proposed further amendments of Marketing Order No. 907 [7 CFR Part 907] regulating the handling of navel oranges grown in Arizona and designated part of California and Marketing Order No. 908 [7 CFR Part 908] regulating the handling of Valencia oranges grown in Arizona and designated part of California, hereinafter referred to collectively as the "orders." The hearing was held pursuant to the provisions of the agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674 *et seq.*], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing order [7 CFR

Part 900]. The Notice of Hearing contained amendment proposals submitted by: The Sequoia Orange Company, Inc.; R. E. Herrick of Belridge Farms and Packing Company; the Navel and Valencia Orange Administrative Committees established under the orders, hereinafter referred to collectively as the "committees," and the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture. The proposals pertained to committee size and composition, a limitation on tenure for members of the Valencia Orange Administrative Committee, changing the basis for industry representation on the committees, inclusion of a definition of "Capper-Volstead" cooperatives in the orders, use of the total volume of all oranges in all outlets in determining nominating rights, and conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on June 1, 1987, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by July 8, 1987. Eleven exceptions were filed, and were discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued June 6, 1988, directing that referenda be conducted during the period June 21 through July 8, 1988, among producers of navel and Valencia oranges grown in Arizona and designated parts of California to determine whether they favored various amendment proposals to the orders. In those referenda, navel orange producers voted in favor of three of the four amendment proposals listed on the referendum ballot, and Valencia orange producers voted for four of the five amendment proposals listed on the referendum ballot. The proposal that did not receive the requisite approval by three-fourths by number of either navel or Valencia orange producers or two-thirds by volume of such production would have authorized an increase in committee size up to 13 members. Accordingly, those proposed amendments are not included in these orders amending the orders and modifications have been made to the proposed marketing orders amending the orders as appropriate to reflect this change. In addition, language inadvertently omitted from § 907.27 in publication of the proposed amendments in the Secretary's Decision is included in the order.

Pursuant to the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. As stated in the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendment proposals on small business for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the Recommended Decision and in the Secretary's Decision. Those findings and conclusions are incorporated herein.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the RFA, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of navel and Valencia oranges would fall within that definition. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having average gross annual revenues for the last three fiscal years of less than $500,000. The majority of California-Arizona navel and Valenica orange producers and handlers may be classified as small entities.

The collection of information under the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] contained in these orders amending orders has been approved by the Office of Management and Budget (Approval Nos. 0581–0116 and 0581–0121).

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing orders and agreements, Navel, Oranges, and Valencia.

Order Amending the Orders—Regulating the Handling of Navel and Valencia Oranges Grown in Arizona and Designated Parts of California

Findings and determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid orders and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR Part 900], a public hearing was held upon proposed amendment of Marketing Order Nos. 907 and 908 [7 CFR Parts 907 and 908], regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California.

Upon the basis of the record, it is found that:

(1) The said orders, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said orders, as amended, and as hereby further amended, regulate the handling of navel and Valencia oranges grown in the designated production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing orders upon which hearings have been held;

(3) The said orders, as amended, and as hereby further amended, are limited in their application to the smallest regional production areas which are practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production areas would not effectively carry out the declared policy of the Act;

(4) The said orders, as amended, and as hereby further amended, prescribe, so far as practicable, such different terms, applicable to different parts of the production areas, as are necessary to give due recognition to differences in the production and marketing of navel and Valencia oranges; and

(5) All handling of navel and Valencia oranges grown in the designated production areas is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Additional Findings

It is necessary and in the public interest to make all of the amendatory provisions effective upon publication in

the **Federal Register**. Any delay beyond that date would interfere with effective order administration.

The provisions of these amendatory orders authorize tenure requirements (for Valencia oranges only), changes in the basis for industry representation on the committees, inclusion of a definition of Capper-Volstead cooperatives in the orders, and the use of total dispositions for determining nominating rights. It is necessary to implement these changes as soon as possible as nominations of members to the Navel Orange Administrative Committee (NOAC) should be completed by October 1, 1988, and a new Valencia Orange Administrative Committee (VOAC) will be selected soon after. For these reasons, new nomination procedures implementing the provisions of each order are necessary to allow the nomination of new members to the committees and will be published separately.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register** [Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559].

(c) Determinations

It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by the said order, as amended, and as hereby further amended) who, during the period November 1, 1987, through June 30, 1988, for navel oranges and during the period February 1, 1987, through January 31, 1988, for Valencia oranges, handled not less than 80 percent of the volume of such oranges covered by the said orders, as amended and as hereby further amended have not signed a marketing agreement; and

(2) The provisions of the amendatory order, amending the aforesaid orders, as amended, were favored by at least three-fourths of the producers who participated in the respective referendum, or by producers who produced for market at least two-thirds of the volume of such commodity represented in the respective referendum, all such producers having been engaged during the aforementioned representative periods within the respective production areas in the production of such oranges for market.

(3) In the absence of signed marketing agreements, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of navel and Valencia oranges in the respective production areas.

Order Relative to Handling

It is, therefore, ordered, That, on and after the effective date hereof, all handling of navel and Valencia oranges grown in the respective production areas shall be in conformity to, and in compliance with, the terms and conditions of the said marketing orders, as amended, and as hereby further amended, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing orders amending the orders contained in the Recommended Decision issued by the Administrator on June 1, 1987, and published in the June 8, 1987, issue of the **Federal Register** [52 FR 20664], and in the Secretary's Decision issued on June 6, 1988, and published in the June 9, 1988, issue of the **Federal Register** [53 FR 21659] shall be and are the terms and provisions of these orders, amending the orders, and are set forth in full herein subject to changes in §§ 907.19, 908.19(a), 907.20, 908.20, 907.21, 908.21, 907.22, 908.22, 907.23, 908.23, 907.24, 908.24, 907.26, 908.26, 907.27, 908.27, 907.29, 908.29, 907.30, 908.30, 907.104, and 908.104, which are set forth in full herein.

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows: [*These sections will appear in the annual Code of Federal Regulations.*]

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.19 is added to read as follows:

§ 907.19 Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

3. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

(a) There is hereby established a Navel Orange Administrative Committee which, as soon as nominations are made pursuant to § 907.22 and selections are made pursuant to § 907.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers, employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 907.22 and selections made pursuant to § 907.23.

4. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin October 1 of each even-numbered year: *Provided*, That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which their are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional

alternate member for the next succeeding term of office.

5. Section 907.22 is revised to read as follows:

§ 907.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of navel oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section, who declare themselves to be nominating entities, or the body of growers who deliver navel oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nominations is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or by the growers who deliver to the handler(s) comprising such entities:

Type of member to be nominated—	Type of business engaged in by declared handler—	Slates of candidates for nomination developed by—	Nominations made by—
Grower/Handler	Capper-Volstead cooperative	Board of Directors	Board of Directors or growers at the option of the Board.
Grower/Handler	Independent	Handlers	Growers.
Grower/Handler	Combination of Capper-Volstead cooperative and independent.	Handlers	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current fiscal year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member.)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceeding table applicable to the other nominating entities shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of navel oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of navel oranges disposed of by all handlers in all outlets during the fiscal year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.99	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total disposition which exceeds 50 percent, the percentage figures in the preceding table shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(e) If nominations for member positions pursuant to paragraphs (c) and

(d) total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section.

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 growers.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 907.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

6. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to §907.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 907.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

7. Section 907.24 is revised to read as follows:

§ 907.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 907.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 907.22.

8. Section 907.26 is revised to read as follows:

§ 907.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 907.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

9. Section 907.27 is revised to read as follows:

§ 907.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member, and, in the absence of such alternate, the additional alternate shall so act; *Provided,* That a grower member may designate any alternate grower member or additional alternate grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 907.29 [Amended]

10. Section 907.29 is amended by removing paragraph (n).

11. Section 907.30 is amended by revising the title to read as follows:

§ 907.30 Voting procedures.

* * * * *

§ 907.104 [Removed]

12. Section 907.104 is removed.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

13. A new § 908.19(a) is added to read as follows:

§ 908.19(a) Capper-Volstead cooperative.

The term "Capper-Volstead cooperative" shall mean an association of producers (i.e., growers) that is qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act," [7 U.S.C. 291, 292].

14. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

(a) There is hereby established a Valencia Orange Administrative Committee which, as soon as nominations are made pursuant to § 908.22 and selections are made pursuant to § 908.23, shall consist of 11 members, for each of whom there shall be one alternate and for each grower and handler member there shall be one additional alternate. Ten of the members and their respective alternates and additional alternates shall be growers, employees of growers, handlers,

employees of handlers, or employees of cooperative marketing organizations. One member and alternate shall be non-industry members, which persons shall not be growers, handlers, or employees, agents, or representatives of a grower or handler (other than a charitable or educational institution which is a grower or handler) or cooperative marketing organization. A grower member, alternate grower member, or additional alternate grower member shall be a grower or an employee of a grower and shall be disqualified if such person ceases to be affiliated with the entity that nominated such person. A handler member, alternate handler member, or additional alternate handler member shall be a handler, employee of a handler, or employee of a cooperative marketing organization and shall be disqualified if such person ceases to be affiliated with the group that nominated such person.

(b) Members, alternate members, and additional alternate members of the committee serving immediately prior to the effective date of this amended subpart shall serve as the members, alternate members, and additional alternate members of the committee until nominations are made pursuant to § 908.22 and selections made pursuant to § 908.23.

15. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member, alternate member, and additional alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided,* That such members, alternate members, and additional alternate members shall serve in such capacities for the portion of the term of office for which they are selected and qualified and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms as a member of the committee shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office.

16. Section 908.22 is revised to read as follows:

§ 908.22 Nominations.

(a) Nominations for member, alternate member, and additional alternate member positions, except for the non-industry member and alternate non-industry member, shall be made by the following entities, based on the percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made:

(1) The cooperative marketing organization or, at the option of that organization, the growers affiliated with that organization which disposed of the largest percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the year in which nominations are made.

(2) Individual handlers or groups of handlers not affiliated with the organization eligible to nominate under paragraph (a)(1) of this section who declare themselves to be nominating entities, or the body of growers who deliver Valencia oranges to such declared handlers or declared groups of handlers. No limit shall be placed on the number of nominating entities which may be formed pursuant to this paragraph: *Provided,* That no handler may participate as a member of more than one nominating entity: *Provided further,* That if a handler coalition forms and qualifies for a member position but no slate of candidates for nomination is developed, the growers affiliated with handlers in such coalition would be eligible to nominate through write-in ballots: *Provided further,* That if a handler coalition forms but does not have the percentage necessary to be allocated a member, the growers affiliated with handlers in such coalition would be eligible to nominate under paragraph (a)(3) of this section. The following table shall be used to determine whether the nominations made by entities established pursuant to this paragraph shall be made by the handler(s) comprising such entities or the growers who deliver to the handler(s) comprising such entities:

Type of member nominated—	Type of business engaged in by declared handler—	Slate of candidates for nomination developed by—	Nominations made by—
Grower/Handler	Capper-Volstead cooperative	Board of Directors	Board of Directors or growers at the option of the board.
Grower/Handler	Independent	Handlers	Growers.
Grower/Handler	Combination of Capper-Volstead cooperative and independent.	Handlers	Growers.

(3) The body of growers not affiliated either with the organization eligible to nominate under paragraph (a)(1) of this section or with those handlers who have declared under paragraph (a)(2) of this section.

(b) The committee may, with the approval of the Secretary, establish a cut-off date for determining the current marketing year dispositions for the nominating groups described above.

(c) The number of nominations which any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 and above	5

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a

percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table for other nominating entities shall change according to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(d) The number of nominations which the nominating entity specified in paragraph (a)(3) of this section may make shall be determined by its volume percentage of the total volume of Valencia oranges disposed of in all outlets as follows:

Nominating entity's percentage of total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made—	Number of members which may be nominated: (An alternate and an additional alternate shall be nominated for each member)
00.00 to 9.99	0
10.00 to 19.99	1
20.00 to 29.99	2
30.00 to 39.99	3
40.00 to 49.99	4
50.00 to 59.99	5
60.00 to 69.99	6
70.00 to 79.99	7
80.00 to 89.99	8
90.00 to 99.00	9
100.00	10

Provided, That if any nominating entity specified in either paragraph (a)(1) or (a)(2) of this section has a percentage of the total dispositions which exceeds 50 percent, the percentage figures in the preceding table shall change to the following formula:

$$\frac{50\%-(\text{excess over } 50\%)}{5} = \text{Percentage required to nominate one member, one alternate, and one additional alternate}$$

(e) If nominations for member positions pursuant to paragraphs (c) and (d) of this section total less than 10, eligibility to make the remaining nominations shall be determined as follows: If one additional member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to the nominating entity which has the greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; if a second member, plus alternate and additional alternate, is to be nominated, the right to make such nomination shall belong to that nominating entity which has the second greatest volume percentage that has not been used to earn nominating rights pursuant to paragraphs (c) and (d) of this section; and so forth: *Provided,* That no nominating entity specified in either paragraph (a)(1) or (a)(2) of this section shall be eligible to nominate more than a total of five members, plus alternates and additional alternates, pursuant to this paragraph and paragraph (c) of this section:

(f) Members nominated by the entities specified in either paragraph (a)(1) or (a)(2) of this section shall be nominated as grower members or handler members, according to the following schedule:

Number of members nominated by a nominating entity	Type of membership
1	1 grower.
2	1 grower, 1 handler.
3	2 growers, 1 handler.
4	3 growers, 1 handler.
5	3 growers, 2 handlers.

All members nominated by the nominating entities specified in paragraph (a)(3) of this section shall be grower members.

(g) Nominations made by growers pursuant to this section shall result from mail balloting procedures conducted by the Secretary whereby candidates to represent an entity are voted on by the affiliated growers: *Provided,* That growers may cast votes for candidates who do not appear on the ballots: *Provided further,* That growers who deliver oranges to more than one nominating entity should select the nominating entity in which they desire to cast their vote. Each grower shall be entitled to cast one vote on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The committee may recommend and the Secretary may establish procedural rules and regulations to implement other methods of balloting.

(h) The members of the committee selected by the Secretary pursuant to § 908.23 shall meet on a date designated by the Secretary and shall nominate the non-industry member and alternate non-industry member.

(i) The time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary: *Provided,* That the committee may recommend and the Secretary may establish procedural rules and regulations to implement this section.

17. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22 or from other qualified growers and handlers, the Secretary shall select 10 members of the committee and an alternate and additional alternate for each member. From the nominations made pursuant to § 908.22(h) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

18. Section 908.24 is revised to read as follows:

§ 908.24 Failure to nominate.

If nominations are not made within the time and in the manner specified pursuant to § 908.22, the Secretary may, without regard to nominations, select the members, alternate members, and additional alternate members of the committee on the basis of the representation provided for in § 908.22.

19. Section 908.26 is revised to read as follows:

§ 908.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member, alternate member, or additional alternate member of the committee to qualify or in the event of the death, removal, resignation, or disqualification of any member, alternate member, or additional alternate member of the committee, a successor to the unexpired term of such member, alternate member, or additional alternate member of the committee shall be selected by the Secretary from nominations made in the manner specified in § 908.22 by the same nominating entity which nominated such person for the term or from other qualified persons.

20. Section 908.27 is revised to read as follows:

§ 908.27 Alternate members.

During the absence of or at the request of a committee member, that member's alternate shall act in the place of such member and, in the absence of such alternate, the additional alternate shall so act: *Provided,* That a grower member may designate any alternate grower member or additional alternate

grower member to act in that member's place if the alternate grower member or additional alternate grower member so designated was selected from the same entity which was authorized to nominate the member, and that a handler member may designate any alternate handler member or additional alternate handler member to act in that member's place if the alternate handler member or additional alternate handler member so designated was selected from the same entity which was authorized to nominate the member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall act for such member until a successor for such member is selected and has qualified.

§ 908.29 [Amended]

21. Section 908.29 is amended by removing paragraph (n).

22. Section 908.30 is amended by revising the title to read as follows:

§ 908.30 Voting procedures.

* * * * *

§ 908.104 [Removed]

23. Section 908.104 is removed.

Signed at Washington, DC, on August 24, 1988.

Robert Melland,

Deputy Assistant Secretary of Agriculture, Marketing and Inspection Services.

[FR Doc. 88-19993 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 910

[Lemon Regulation 629]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 629 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 310,000 cartons during the period September 4 through September 10, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 629 (§ 910.929) is effective for the period September 4 through September 10, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5697.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, 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.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910] regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1988-89. The committee met publicly on August 30, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.929 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.929 Lemon Regulation 629.

The quantity of lemons grown in California and Arizona which may be handled during the period September 4, 1988, through September 10,1988, is established at 310,000 cartons.

Dated: August 31, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-20147 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 920

[AMS-FV-88-064FR]

Kiwifruit Grown in California; Final Rule Revising Minimum Quantity Exemption and Clarifying Exempt Shipments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds a subsection to the handling regulation for kiwifruit grown in California specifying the types of uses which would exempt such handling from the requirements of that regulation. This rule also revises the regulation which exempts kiwifruit handlers from certain regulations based on the sale of a small quantity of fruit sold for home use. These actions clarify provisions relative to the quantity and types of shipments that are not subject to the quality, maturity, size, pack, and

inspection requirements imposed under the marketing order.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Todd A. Delello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–5610.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920 [7 CFR Part 920], as amended, regulating the handling of kiwifruit grown in the State of California. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 1,225 producers in the production area. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue 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 handlers and producers of California kiwifruit may be classified as small entities.

The 1987 California kiwifruit harvest totalled 7.8 million trays and tray equivalents, 21 percent larger than the 1986 harvest. For the past ten years, kiwifruit production has increased in California and is expected to increase again in 1988 to a total of 8.7 million trays. Most of the crop is shipped to fresh markets, with only a small volume of fruit utilized by processors. Exports increased 31 percent over last year and are estimated to have accounted for 55 percent of the 1987 production. Domestic shipments are also increasing, with a gain of about 20 percent for the 1987 crop. It has been estimated that 20 to 25 percent of domestic shipments is utilized in foodservice markets (e.g. restaurants).

The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [52 FR 37130, October 5, 1987]. The current requirements specify that kiwifruit shall grade at least 85 percent U.S. No. 2 with not more than 8 percent allowed for defects other than shape causing damage, not more than 4 percent allowed for defects other than shape causing serious damage, and not more than 1 percent allowed for fruit affected by internal breakdown or decay. Kiwifruit also must meet a minimum size of 49 and contain a minimum of 6.5 percent soluble solids at the time of inspection. Pack and container requirements are also specified.

This rule revises the administrative rule pertaining to the minimum quantity exemption and adds a new paragraph (c) to the handling regulation (§ 920.302) listing the types of shipments that are exempt from its requirements. The first change was unanimously recommended, and the second was recommended by a six to five vote by the Kiwifruit Administrative Committee on April 6.

The marketing order specifies in paragraph (a) of § 920.54 that kiwifruit handled for certain uses are exempt from the handling regulations imposed under the order as well as inspection and assessment requirements. Such uses are consumption by charitable institutions, distribution by relief agencies, and commercial processing into products. There currently exists some misunderstanding among kiwifruit handlers as to what activities "commercial processing into products" includes. This rule lists these exemptions in the handling regulation and defines the meaning of "commercial processing into products" consistent with the intent of this order provision.

As previously indicated, the foodservice industry is an important market for California kiwifruit in terms of the volume of fruit utilized in such outlets. Additionally, consumers are often introduced to this fruit while dining outside the home. Therefore, the committee concluded that it is necessary that a quality product reach these markets.

Fresh kiwifruit used by foodservice operators is generally peeled and sliced before serving. Some shippers have mistakenly interpreted this to mean the fruit is being processed and therefore such shipments fall within the exemption provision.

The record evidence supporting this exemption provision in the order, however, indicates that "commercial processing into products" is intended to cover such uses as production into wine, jams and jellies because kiwifruit so utilized does not affect the marketing of kiwifruit in commercial fresh fruit market channels, and therefore no use would be served by requiring such kiwifruit to meet quality standards imposed under the order.

While the acts of peeling and slicing prior to serving do not qualify as "commercial processing into products" under paragraph (a) of § 920.54, the committee considered recommending that shipments to foodservice outlets be exempt from handling regulations under paragraph (b) of that section. The majority of the committee members believed, however, that such shipments should continue to meet the established grade, size and maturity standards because they account for a significant share of total fresh shipments. Allowing such a large volume of potentially substandard fruit to be shipped could depress the market for all kiwifruit. In addition, it would be difficult to monitor the movement of fruit shipped to foodservice outlets to ascertain whether the fruit was, in fact, utilized for exempt purposes.

Therefore, the term "commercial processing into products" is clearly defined to mean that kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating. This clarification ensures that fresh kiwifruit served in foodservice outlets meet the minimum quality standards imposed under the order.

The marketing order also provides another exemption from the handling regulation for kiwifruit directly marketed by growers under certain conditions. Such kiwifruit must be sold for home use, and not for resale. The maximum quantity that can be sold to any one person on any one day is currently limited to 200 pounds. Using this current poundage limit, a handler can sell three separate family members in one vehicle up to 600 pounds of kiwifruit free from all regulations. The committee believes that this amount is excessive in view of the basic intent of this exemption provision, i.e. that the fruit is for home use, not resale. The committee recommended that the 200 pound limit be applied to all persons collectively in any one vehicle and believes that this change will further the fulfillment of this provision's objective.

With current annual per capita consumption of kiwifruit in the United States being approximately 0.2 pounds, a 200 pound-per-vehicle exemption amount should be adequate to meet the needs for home use. Therefore, paragraph (b)(2) of § 920.110 is revised accordingly.

Finally, paragraph (a) of the handling regulation (§ 920.302) is revised to remove obsolete language.

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

Notice of this action was published in the **Federal Register** on July 13, 1988 [53 FR 26445] allowing interested persons until August 12, 1988, to file written comments. No comments were received.

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

Pursuant to 5 U.S.C. 553, it is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** in that: (1) The 1988 harvest of California kiwifruit will begin in early October, and this action should be effective October 1; and (2) the provisions in this final rule are the same as those in the proposal, which received no opposing comments.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

For the reasons set forth in the preamble, 7 CFR Part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

2. Section 920.110 is amended by revising paragraph (b)(2) to read as follows:

Note.—This regulation will appear in the Code of Federal Regulations.

§ 920.110 Exemptions.

* * * * *

(b) * * *

(2) The total weight of such kiwifruit sold to all persons collectively in any one vehicle during any one day does not exceed 200 pounds.

* * * * *

3. Section 920.302 is amended by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

[Note: This regulation will appear in the Code of Federal Regulations.]

§ 920.302 Grade, size, pack, and container regulations.

(a) No handler shall ship any kiwifruit unless such kiwifruit meet the following requirements:

* * * * *

(c) *Exemptions.* Any person may handle kiwifruit without regard to the provisions of this section provided that such kiwifruit is handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; or (3) commercial processing into products. For the purposes of this section, "commercial processing into products" means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19991 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 981

[FV–88–128FR]

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1987–88 Crop Year; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographical error contained in a final rule published in the **Federal Register** on July 29, 1988 (53 FR 28631). The action corrects § 981.235 of Subpart—Salable, Reserve, and Export Percentages issued under Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The action changes the date contained in the heading of § 981.235 from July 1, 1988, to July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, Room 2525, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This action corrects a final rule which revised salable and reserve percentages for marketable California almonds received by handlers during the 1987–88 crop year, which began July 1, 1987. That rule increased the salable percentage from 82 to 100 percent and correspondingly decreased the reserve percentage from 18 percent to 0 percent.

The error appears in the heading to revised § 981.235 found in the third column on page 28631 of the July 29, 1988, issue of the **Federal Register**. In that heading, an erroneous date of July 1, 1988, was inadvertently used. This action corrects that date to July 1, 1987.

List of Subjects in 7 CFR Part 981

Almonds, California, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR Part 981 is corrected to read as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

Subpart—Salable, Reserve, and Export Percentages

2. Correctly revises § 981.235 to read as follows:

§ 981.235 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1987.

The salable, reserve, and export percentages during the crop year beginning July 1, 1987, shall be 100 percent, 0 percent, and 0 percent, respectively.

Dated: August 30, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–20062 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 88–100]

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by adding the particle concentration fluoresence immunoassay (PCFIA) test to the list of

official tests for brucellosis in cattle and bison. This action is warranted to allow for testing that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Hugh E. Metcalf, Senior Staff Veterinarian, Program Planning Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8713.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to prevent the spread of brucellosis.

On April 12, 1988, we published in the **Federal Register** (53 FR 12019–12024, Docket Number 88–020) a document proposing to amend § 78.1 by adding the particle concentration fluoresence immunoassay (PCFIA) test to the list of official tests for brucellosis in cattle and bison. In our proposal, we included portions of the procedures for conducting the PCFIA test. We invited the submission of written comments, which were required to be postmarked or received on or before May 12, 1988. We received nine comments—two from private individuals, one from the American Veterinary Medical Association, one from the Holstein Association, and five from state agencies responsible for animal health.

Four commenters favored the rule as published.

Three commenters favored adoption of the PCFIA test as an official test, but objected to our including test procedures. One commenter objected to inclusion of the procedures, without favoring or opposing adoption of the test. In response to these comments, and based on our concerns with including only portions of the procedures in the regulations, we are adding the PCFIA test to the list of official tests without including the portions of the procedures for carrying out the test. We are, however, considering inclusion of the protocol for the PCFIA test and other official tests in a testing manual for incorporation by reference or inclusion in the regulations.

One commenter supported adoption of the PCFIA test as an official test, but disagreed with our statement in the backgound information of the proposal that the test could stand alone as a diagnostic test. The commenter stated that supplemental tests would be necessary in most cases, particularly in vaccinated populations. According the the commenter, the specificity of the PCFIA test when used for cattle that have received an adult vaccination within the previous year is inferior to the manual complement-fixation (CF) test in the range of S/N ratios (the ratio of sample or positive control to control signal) proposed to indicate a reactor (<.25).

We are making no changes based on this comment. The data supplied by the developer of the test showed no statistical difference in specificity and sensitivity between the PCFIA and CF tests for samples testing positive. Although running two or more types of tests concurrently might provide an increased combined sensitivity, the increase with regard to the PCFIA would likely be slight.

The same commenter expressed concern regarding how the test would be interpreted, stating that because control samples don't usually reveal fluctuations in the test's sensitivity, professional experience is sometimes necessary to make an appropriate diagnosis. We are making no changes based on this comment. The designated epidemiologist (an epidemiologist selected by the state animal health official and the Veterinarian in Charge to perform the functions required) has the authority to supplement the results of the test with considerations regarding the individual animal, herd history, and other epidemiologic factors when determining the brucellosis classification of cattle and bison.

One of the commenters favoring adoption of the PCFIA test as an official test expressed concern that the cost of the test might be prohibitive. According to the commenter, the cost of the required instrumentation and reagents would probably limit the use of the test to one central laboratory. We are making no changes based on this comment. Our inclusion of the PCFIA test as an official test is based on its efficacy as a diagnostic tool. If it proves to be prohibitively expensive, other official tests will still be available for use. As we stated in the proposed rule, it is expected that lower personnel expenses due to the increased speed and automation of the test will offset the start-up and recurring costs.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule, with the changes noted. Additionally, we are including the PCFIA test in the list of official tests at § 78.1(a)(10) of the regulations, rather than at § 78.1(a)(9) as proposed. This change is necessary because another test was added at § 78.1(a)(9) between the time the April 12 proposed rule was published and publication of this final rule. We are also redesignating § 78.1(a)(10) of the current regulations as § 78.1(a)(11).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action will only provide an additional official brucellosis test for cattle and bison as an option for use in determining whether an animal is infected with the disease. The testing requirements for brucellosis will not change. Moreover, use of the PCFIA test will not affect the market price of the animals tested. Although more rapid testing may allow faster marketing, the economic effect on owners of cattle or bison will not be significant. Nor will the inclusion of the PCFIA test as an official test have a significant economic effect on laboratories. Although the cost of this test may be more than that for other official tests, due to the need for new equipment and to higher reagent costs, lower personnel expenses due to the increased speed and automation of the test are expected to offset the start-up and recurring costs. Other official tests will still be available to those laboratories where the PCFIA test is not used.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork

Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

Effective Date

The Administrator, Animal and Plant Health Inspection Service, has determined that this rulemaking proceeding should be expedited by making it effective upon publication. Inclusion of the PCFIA test as an official test for brucellosis in cattle and bison will allow those laboratories that choose to use the test to conduct testing that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used. Some laboratories already have the equipment necessary to conduct the PCFIA test, are currently using the test with regard to intrastate movement of cattle, and could begin using the test for interstate movement without purchasing new equipment. Delaying the effective date of this rule would create an unnecessary delay in the use of the PCFIA test.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of "official test" is amended by redesignating paragraph (a)(10) as paragraph (a)(11), and by adding a new paragraph (a)(10) to read as follows:

§ 78.1 Definitions.

* * * * *

Official test.

(a) * * *

(10) Particle concentration fluorescence immunoassay (PCFIA) test. An automated serologic test to determine the brucellosis disease status of test-eligible cattle and bison when conducted according to instructions approved by Veterinary Service. Cattle and bison are classified according to the following ratio between the test sample and a known negative sample (S/N ratio):

S/N Ratio	Classification
Greater than .70	Negative.
.26 to .70	Suspect.
.25 or lower	Reactor.

* * * * *

Done in Washington, DC, this 30th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20057 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 92

[Docket No. 88–130]

Restrictions on Importation of Horses From Switzerland

AGENCY: Animal and Plant Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations by adding Switzerland to the list of countries in which contagious equine metritis (CEM) exists. Because Switzerland is no longer free of CEM, we are restricting the importation of certain horses from that country to prevent the livestock of the United States from contracting the disease.

Stallions and mares from Switzerland that are older than 731 days will not be permitted into the United States under standard 3-day quarantine and testing procedures. Instead, they must be tested and treated in accordance with procedures established to qualify stallions and mares from CEM-affected countries for importation into the United States.

We took this action in response to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations on animal importations in 9 CFR Part 92 (referred to below as the regulations) restrict the importation of horses that could introduce various diseases, including contagious equine metritis (CEM), into the United States. CEM, a venereal disease, affects horses' fertility and breeding.

Section 92.2(i)(1) lists the countries in which CEM exists and, with certain exceptions, prohibits importation of horses from those countries and horses that have been in any of those countries within the 12 months immediately preceding their export to the United States.

In an interim rule that was effective May 27, 1988, and published in the **Federal Register** on June 3, 1988 (53 FR 20306–20307, Docket Number 88–092), we added Switzerland to the list of countries in which CEM exists. We took this action in response to information from Swiss animal health officials, confirming their finding of CEM on April 28, 1988. Comments on the interim rule were required to be postmarked or received on or before August 2, 1988. We did not receive any comments. The facts presented in the interim rule still provides a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Stallions and mares from Switzerland that are older than 731 days must undergo testing and treatment in Switzerland and the United States that is more extensive than is standard during a 3-day quarantine. The extra time required for this additional testing and treatment will delay the horses' importation into this country; it will therefore increase the cost to importers of horses from Switzerland. However, of the approximately 22,000 horses imported into the United States in 1987, only 56 came from Switzerland. We

estimate that fewer than half of these would fall into the category of animals affected by this interim rule. We therefore expect this rule to have little or no effect on importers. Those deterred by the cost of testing and quarantining a stallion or mare affected by this interim rule could, instead, import geldings or, for breeding, horses younger than 731 days. Alternatively, they could import horses from any CEM-free country.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR Part 92 and that was published at 53 FR 20306–20307 on June 3, 1988.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20059 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–20–AD; Amdt. 39–6013]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to CASA Model C–212 series airplanes, which currently requires replacement of certain elevator rudder, and aileron trim control system rods, levers, links, and tabs. That action was prompted by an FAA determination that, in the event of certain failures in these control systems, the potential exists for damage to the airframe due to flutter. This amendment requires the addition of two collars to the aileron trim tab control. These collars are necessary to properly secure the pins and bolts. The applicability statement is also revised to include all U.S. registered CASA Model C–212 series airplanes.

DATE: Effective October 11, 1988.

ADDRESSES: The applicable service information may be obtained from Construcciones Aeronauticas S.A., (CASA) Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Armella Donnelly, Standardization Branch, ANM–113; telephone (206) 431–1967. 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 revising AD 87–18–08, Amendment 39–5724 (52 FR 35233; September 18, 1987), applicable to Model C–212 series airplanes, to require the addition of two collars to the aileron trim tab control, and to expand the applicability to include all U.S.-registered CASA Model C–212 series airplanes, was published in the **Federal Register** on May 25, 1988 (53 FR 18855).

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

The commenter noted that in the preamble to the Notice, the statement "This airplane model is manufactured in the United Kingdom and Indonesia * * *," should have read "* * * manufactured in Spain and Indonesia * * *." The FAA concurs that the country of manufacture was misidentified and has revised the statement accordingly, as indicated below.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This airplane model is manufactured in Spain and Indonesia and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreements.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 180 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 this AD to U.S. operators is estimated to be $316,800.

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, CASA Model C–212 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 to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation of 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 87-18-08, Amendment 39-5724 (52 FR 35233; September 18, 1987), by expanding the applicability statement, adding new paragraph B., and redesignating existing paragraphs B. and C. as C. and D., respectively, to read as follows:

CASA: Applies to all CASA Model C-212 series airplanes, certificated in any category. Compliance is required by April 19, 1989, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components, in accordance with CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985.

B. Install two collars on the aileron control system, in accordance with CASA Service Bulletin 212-27-25, Revision 4, dated October 28, 1987.

C. 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, Standardization Branch, ANM-113, 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 Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by 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 Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends AD 87-18-08, Amendment 39-5724.

This amendment becomes effective October 11, 1988.

Issued in Washington, DC., on August 25, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-19951 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25681; Amdt. No. 1781]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied

to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN; and VOR/DME or TACAN: § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 20, 1988*

Cordova, AK—Cordova Mile 13, NDB-A, Amdt. 5, *Cancelled*

Cordova, AK—Cordova Mile 13, ILS/DME RWY 27, Amdt. 6

Nenana, AK—Nenana Muni, NDB-A, Amdt. 2, *Cancelled*

Flippin, AR—Marion County Regional, VOR-A, Amdt. 12

Mountain Home, AR—Baxter County Regional, VOR-A, Amdt. 8

Greeley, CO—Greeley-Weld County, VOR or TACAN-A, Amdt. 7

Greeley, CO—Greeley-Weld County, NDB RWY 9, Amdt. 1

Greeley, CO—Greeley-Weld County, ILS RWY 9, Amdt. 3

Bartow, FL—Bartow Muni, VOR/DME RWY 9L, Amdt. 1

Marathon, FL—Marathon, NDB RWY 7, Amdt. 2

Idaho Falls, ID—Fanning Field, VOR RWY 2, Amdt. 5

Idaho Falls, ID—Fanning Field, VOR RWY 20, Amdt. 8

Idaho Falls, ID—Fanning Field, LOC BC RWY 2, Amdt. 3

Idaho Falls, ID—Fanning Field, NDB RWY 20, Amdt. 8

Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt. 7

Rexburg, ID—Rexburg-Madison County, VOR RWY 35, Amdt. 2

Las Vegas, NM—Las Vegas Muni, VOR RWY 2, Amdt. 9

Las Vegas, NM—Las Vegas Muni, VOR RWY 20, Amdt. 4

Elmira, NY—Elmira/Corning Regional, NDB RWY 24, Amdt. 13

Elmira, NY—Elmira/Corning Regional, ILS RWY 24, Amdt. 15

Elizabeth City, NC—Elizabeth City CG Air Station/Muni, NDB RWY 10, Orig.

Greensboro, NC—Piedmont Triad International, VOR RWY 5, Amdt. 11

Greensboro, NC—Piedmont Triad International, ILS RWY 5, Amdt. 3

Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 3

Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Amdt. 2

Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 3

Millersburg, OH—Holmes County, VOR-A, Amdt. 6

Millersburg, OH—Holmes County, NDB RWY 27, Amdt. 5

Newark, OH—Newark-Heath, VOR-A, Amdt. 10

Newark, OH—Newark-Heath, SDF RWY 9, Amdt. 2

Newark, OH—Newark-Heath, NDB RWY 9, Amdt. 4

Newark, OH—Newark-Heath, RNAV RWY 27, Amdt. 4

Willard, OH—Willard, VOR-A, Amdt. 5

Aguadilla, PR—Borinquen, NDB RWY 08, Orig., *Cancelled*

Laurens, SC—Laurens County, NDB RWY 7, Amdt. 1

Fort Stockton, TX—Fort Stockton-Pecos County, VOR/DME-A, Amdt. 5

Fort Stockton, TX—Fort Stockton-Pecos County, VOR RWY 12, Amdt. 7

Friday Harbor, WA—Friday Harbor, RADAR-1, Amdt. 1

Elkins, WV—Elkins-Randolph Cnty-Jennings Randolph Fld, LDA-C, Amdt. 5

Elkins, WV—Elkins-Randolph Cnty-Jennings Randolph Fld, NDB-A, Amdt. 4

Casper, WY—Natrona County Intl, VOR/DME RWY 3, Amdt. 2

Casper, WY—Natrona County Intl, VOR RWY 21, Amdt. 15, *Cancelled*

Casper, WY—Natrona County Intl, VOR/DME or TACAN RWY 21, Amdt. 6

Casper, WY—Natrona County Intl, LOC BC RWY 26, Amdt. 17

Casper, WY—Natrona County Intl, NDB RWY 8, Amdt. 13

Casper, WY—Natrona County Intl, ILS RWY 3, Amdt. 3

Casper, WY—Natrona County Intl, ILS RWY 8, Amdt. 23

Casper, WY—Natrona County Intl, RADAR-1, Amdt. 2

** * * Effective September 22, 1988*

New Haven, CT—Tweed-New Haven, VOR-A, Orig.

Keystone Heights, FL—Keystone Airpark, VOR/DME RWY 4, Orig.

Kenosha, WI—Kenosha Muni, NDB RWY 14, Amdt. 9, *Cancelled*

[FR Doc. 88-19954 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-CE-24-AD; Amdt. 39-6014]

Airworthiness Directives; Cessna Model 208B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Model 208B airplanes, which requires the elevator static balance to be established within the correct limits. The FAA had determined that these airplanes may have been manufactured with an improper static balance of the elevators. The proposed actions will preclude possible elevator flutter and the resultant structural damage and loss of control.

DATES: September 30, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletin (S/B) CAB 88-27, dated August 19, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number (316) 946-7550. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, FAA, ACE-120W, Room 100, 1801

Airport Road, Wichita, Kansas 67209; telephone number (316) 946–4409.

SUPPLEMENTARY INFORMATION: The FAA had determined that the elevators on certain Cessna Model 208B airplanes may not have been manufactured with the correct static balance. Flutter analysis indicates these elevators are flutter free in normal operation but potentially unstable if ice build-up were to occur during flight into icing conditions. Elevator flutter could cause structural failure and result in loss of the airplane. Therefore, to preclude this instability, proper elevator balance must be assured. As a result, Cessna has issued S/B CAB 88–27, dated August 19, 1988, which specifies static balance and rebalance procedures for the affected airplanes.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the elevator static balance to be checked on certain Cessna Model 208B airplanes, and changed if required. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me the Administrator, the Federal Aviation Administration amends § 30.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

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

Authority: 48 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to Model 208B (Serial Numbers 208B0001 through 208B0106) airplanes certificated in any category.

Compliance: Required within the next 50 hours time-in-service after effective date of this AD, unless already accomplished.

To prevent possible elevator flutter, accomplish the following:

(a) Check both elevators for correct balance in accordance with the procedures given in Cessna Service Bulletin CAB 88–27, dated August 19, 1988. If any elevator is out of balance, prior to further flight rebalance the elevator in accordance with the instructions and the criteria contained in the above Service Bulletin.

Note: The elevator balance limits currently shown in the Maintenance Manual for the 208 series airplane are not applicable to the 208B.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67208; telephone (316) 946–4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Co., Customer Services, P.O. Box 7704, Wichita, Kansas 67277; telephone number (316) 946–7550; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City Missouri 64106.

This amendment becomes effective on October 3, 1988.

Issued in Washington DC, on August 26, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–19952 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88–AGL–10]

Establishment of Transition Area; Kenosha, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Kenosha, WI, transition area to accommodate a new VOR Runway 24R Standard Instrument Approach Procedure (SIAP) to Kenosha Municipal Airport, Kenosha, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, June 21, 1988, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Kenosha, WI (53 FR 23257).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area airspace near Kenosha, WI.

The development of a new VOR Runway 24R SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition 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—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kenosha, WI [New]

That airspace extending upward from 700 above the surface within an 8.5 mile radius of Kenosha Municipal Airport, Kenosha, WI (Lat. 42°35'43"N., Long. 87°55'39"W.); excluding the portions which overlie the Chicago, IL, and Milwaukee, WI, transition areas.

Issued in Des Plaines, Illinois, on August 23, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 88-19955 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 88-ASO-14]

Alteration of VOR Federal Airways; Cape Canaveral, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Several restricted areas located in the vicinity of Cape Canaveral, FL, were realigned and renumbered. Federal Airways V-3, V-437 and V-533 are affected by changes to those restricted areas, and portions of these airways are amended by changing the segments that are affected by the "exclusionary" clause changes. This action amends editorial portions by correcting the exclusionary portions of these descriptions.

DATES: Effective date—0901 UTC, October 20, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, 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) 267-9250.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the portions of V-3, V-437 and V-533 which fall within restricted areas and does not affect current alignment of the airways. Several restricted areas located in Cape Canaveral, FL, were previously realigned and renumbered (53 FR 6796). Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

Since this action is a minor amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and impracticable.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

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.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-3 [Amended]

By removing all after the words "PQ, Canada." and substituting the words "The airspace within R-2916, R-2934, R-2935 and within Canada is excluded."

V-437 [Amended]

By adding the following to the end of the current description "The airspace within R-2935 is excluded."

V-533 [Amended]

By adding the following to the end of the current description "The airspace within R-2935 is excluded."

Issued in Washington, DC, on August 16, 1988.

William C. Davis,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-19956 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 99

[Docket No. 25113; Amdt. No. 99-13]

Security Control of Air Traffic; Modification of the U.S. Air Defense Identification Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On May 20, 1988, the FAA published a final rule modifying the U.S. Air Defense Identification Zones (ADIZ) (53 FR 18216). This action corrects the name of the ADIZ surrounding the Contiguous United States and corrects an error in the description of that ADIZ.

EFFECTIVE DATE: June 30, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Adoption of the Corrections

Accordingly, pursuant to the authority delegated to me, Docket No. 25113; Amdt. No. 99-13, as published May 20, 1988 (53 FR 18216) is corrected as follows:

PART 99—[AMENDED]

1. Section 99.42 on page 18217, in the second column, table of contents under Subpart B—Designated Air Defense Identification Zone, is revised to read as follows: "§ 99.42 Contiguous U.S. ADIZ."

2. Section 99.42 on page 18218, in the third column, is revised to read as follows:

"§ 99.42 Contiguous U.S. ADIZ.

(a) The area bounded by a line from 26°00'N, 96°35'W; 26°00'N, 95°00'W; 26°30'N, 95°00'W; then along 26°30'N to 26°30'N, 84°00'W; 24°00'N, 83°00'W; 24°00'N, 80°00'W; 24°00'N, 79°25'W; 25°40'N, 79°25'W; 27°30'N, 78°50'W; 30°45'N, 74°00'W; 39°30'N, 63°45'W; 43°00'N, 65°48'W; 41°15'N, 69°30'W; 40°32'N, 72°15'W; 39°55'N, 73°00'W; 39°38'N, 73°00'W; 39°36'30"N, 73°40'30"W; 39°30'N, 73°45'W; 37°00'N, 75°30'W; 36°10'N, 75°10'W; 35°10'N, 75°10'W; 32°01'N, 80°32'W; 30°50'N, 80°54'W; 30°05'N, 81°07'W; 27°59'N, 79°23'W; 24°49'N, 80°00'W; 24°49'N, 80°55'W; 25°10'N, 81°12'W; then along a line 3 nautical miles from the shoreline to 25°45'N, 81°27'W; 25°45'N, 82°07'W; 28°55'N, 83°30'W; 29°20'N, 85°00'W; 30°00'N, 86°00'W; 30°00'N, 88°30'W; 29°00'N, 89°00'W; 28°45'N, 90°00'W; 29°26'N, 94°00'W; 28°42'N, 95°17'W; 28°05'N, 96°30'W; 26°25'N, 96°30'W; 26°00'N, 96°35'W; 25°58'N, to 97°07'W;

(b) The area bounded by a line from 32°32'03"N, 117°07'25"W; 32°30'N, 117°20'W; 32°00'N, 118°24'W; 30°45'N, 120°50'W; 29°00'N, 124°00'W; 37°42'N, 130°40'W; 48°20'N, 132°00'W; 48°20'N, 128°00'W; 48°30'N, 125°00'W; 48°29'38"N, 124°43'35"W; 48°00'N, 125°15'W; 46°15'N, 124°30'W; 43°00'N, 124°40'W; 40°00'N, 124°35'W; 38°50'N, 124°00'W; 34°50'N, 121°10'W; 34°00'N, 120°30'W; 32°00'N, 118°24'W; 32°30'N, 117°20'W; 32°32'03"N, to 117°07'25"W; and

(c) A line extending from 32°32'03"N, 117°07'25"W; eastward along the United States-Mexico Border to 25°58'00"N, 97°07'00"W."

Issued in Washington, DC, on August 26, 1988

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88-19953 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F-0459]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, in the manufacture of paper and paperboard intended for use in contact with food. This action responds to a food additive petition filed by Ciba-Geigy Corp.

DATES: Effective September 2, 1988; written objections and requests for a hearing by October 3, 1988.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 23, 1986 (51 FR 45955), FDA announced that a food additive petition (FAP 7B3973) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, as a deposit control additive for use in the manufacture of paper and paperboard intended for use in contact with food.

FDA has reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, has not been found to cause cancer, it has been found to contain minute amounts of unreacted ethyl acrylate, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethyl acrylate, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2234, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it

possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

The agency estimated the daily intake of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, on the basis of several factors, including the migration of the additive under the most severe intended conditions of use and the probable concentration of the additive in the daily diet from food-contact articles. The agency estimated the daily intake of the additive to be 66 micrograms per person per day for a 60-kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available data from acute toxicity studies, mutagenicity studies, subchronic studies, and teratology studies on the additive. No adverse effects were reported in these studies.

Because maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, which may contain ethyl acrylate, has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurity ethyl acrylate has two aspects: (1) Assessment of the worst case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Ethyl Acrylate

Based on the fraction of the daily diet that may be in contact with surfaces containing maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, and on the level of ethyl acrylate that may be present in the additive, FDA estimated the hypothetical worst case exposure to ethyl acrylate from the use of this additive in paper and paperboard coatings contacting aqueous and fatty foods to be less than 0.18 microgram per person per day (Ref. 3). The agency used data in the National Toxicology Program bioassay on ethyl acrylate to estimate the upper bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (Ref. 4). The results of the bioassay on ethyl acrylate demonstrated that the material was carcinogenic for rats and mice under the conditions of the study. The test material induced squamous cell neoplasms in both sexes of Fischer 344 rats and B6C3F1 mice when administered by gavage in corn oil.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the committee) reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethyl acrylate. The committee further concluded that an estimate of the upper bound level of human risk from potential exposure to ethyl acrylate stemming from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, could be calculated from the bioassays.

The agency used a quantative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the study with male rats (the most sensitive animals) to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst case exposure of less than 0.18 microgram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to ethyl acrylate from the use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed, is 1.4×10^{-8} or less than 1 in 71 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethyl acrylate is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethyl acrylate that might result from the proposed use of maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed.

B. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of ethyl acrylate impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which ethyl acrylate may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst case assumptions, is very low, less than 1 in 71 million.

C. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed uses for the additive in paper and paperboard

products in contact with aqueous and fatty foods are safe. Based on this information, the agency has also concluded that the additive will have its intended technical effect. Therefore, § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations, implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "carcinogenicity Testing Programs," *in* "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," *in* "Chemical Safety Regulation and Compliance," Edited by F. Homburger and J. K. Marquis, S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum dated November 23, 1987, from the Food and Color Additives Review Section to Indirect Additives Branch, "FAP 7B3973—Ciba-Geigy Corp.—Exposure to Components of the Additive."

4. Carcinogenisis Studies of Ethyl Acrylate (CAS Reg. No. 140–88–5) in F–344/N Rats and B63F Mice (Ganage Studies), National Toxicology Program, Technical Report Series No. 259, December 1986.

5. Memorandum dated January 28, 1988, from Quantitative Risk Assessment Committee to Dr. W. Gary Flamm, "Ethyl Acrylate".

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 3, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table under the headings "List of Substances" and "Limitations" to read as follows:

§176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Maleic anhydride, polymer with ethyl acrylate and vinyl acetate, hydrolyzed (CAS Reg. No. 110392–51–3).	For use only as a deposit control additive prior to the sheet forming operation to prevent scale buildup in the manufacture of paper and paperboard in contact with food, at a level not to exceed 0.075 percent by weight of the dry paper and paperboard.
* * * * *	

* * * * *

Dated: August 29, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–20031 Filed 9–1–88; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8223]

Income Taxes; Branch Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the branch tax. This regulation will provide immediate guidance to taxpayers concerning the imposition of tax on profits of a U.S. branch of a foreign corporation that is removed from the branch and on interest that is paid, or deemed paid, by the branch. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard M. Elliott of the Office of the 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 979–86) (202–566–6457, 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 1545–1070.

The estimated annual burden per respondent/recordkeeper varies from .1 hour to 10.5 hours depending on individual circumstances, with an estimated average of .3 hour.

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 in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations under section 884 of the Internal Revenue Code of 1986. This section was added to the Code by section 1241 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2576).

Need for Temporary Regulations

The proper application of section 884 is dependent upon the Internal Revenue Service's detailed specifications of the manner in which the requirements of the statute will be administered. These regulations are necessary to provide taxpayers with immediate guidance in the application of section 884, as added to the Code by section 1241 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085, 2576).

Explanation of Provisions

Branch Profits Tax

Section 1.884–1T(b) provides rules for computing the dividend equivalent amount, the base on which the branch profits tax is imposed. The dividend equivalent amount is a foreign corporation's effectively connected earnings and profits for the taxable year reduced by any increase in U.S. net equity during the taxable year or increased by any decrease in U.S. net equity during the taxable year. An increase in U.S. net equity is treated as a reinvestment of effectively connected earnings and profits in a U.S. trade or business and a decrease in U.S. net equity is generally treated as a disinvestment of effectively connected earnings and profits accumulated in prior years. However, an increase in the dividend equivalent amount is limited to post-1986 effectively connected earnings and profits of a foreign corporation that have not been previously subject to the branch profits tax (non-previously taxed accumulated effectively connected earnings and profits).

Section 1.884–1T(c) defines the term "U.S. net equity" as a foreign corporation's U.S. assets reduced by its U.S. liabilities.

Under § 1.884–1T(d), property is a U.S. asset if all of the income from its use and all the gain from its disposition on the date on which a determination is made (if used or sold at a gain on that determination date), would be income that is effectively connected with the conduct of a U.S. trade or business. Rules are given for specific types of property, such as depreciable property, inventory, U.S. real property interests, and partnership interests. The amount taken into account as a U.S. asset with respect to property is the adjusted basis of the property for purposes of computing earnings and profits.

Section 1.884–1T(d)(11) provides that a foreign corporation may elect to treat a limited amount of marketable securities as U.S. assets. The purpose of this election is to provide relief from the requirement that effectively connected earnings and profits be reinvested as of the close of the year. Income from the securities is treated as effectively connected with the conduct of a U.S. trade or business.

Section 1.884–1T(d)(13) enumerates certain types of property that are not treated as U.S. assets even though the property would otherwise qualify as U.S. assets under § 1.884–1T(d). Such property includes property that produces income that is effectively connected with the conduct of a U.S. trade or business but does not produce effectively connected earnings and profits, and property that is acquired or used to artificially increase U.S. net equity.

Under § 1.884–1T(e), "U.S. liabilities" are determined on the basis of fungibility, *i.e.*, as the product of a foreign corporation's U.S. assets at the close of the taxable year and either the ratio of the foreign corporation's worldwide liabilities at the close of the taxable year to its worldwide assets at the close of the taxable year or, if the foreign corporation computes its interest deduction using a fixed ratio of liabilities to assets under § 1.882–5(b)(2)(i), the fixed ratio. A special rule is provided for computing the liabilities of a foreign corporation that is a partner in a partnership. Under an anti-abuse rule, an artificial decrease in the U.S. liabilities of the foreign corporation is disregarded.

As an alternative to fungibility, a booking method was considered for determining U.S. liabilities. However, the regulations adopt the fungibility approach for several reasons. First, section 884(c)(2)(C) provides that the regulations defining U.S. liabilities shall be consistent with the allocation of deductions under section 882(c)(1). Second, fungibility is, in general, more consistent with the principles of the branch profits tax. Because U.S. assets are generally defined as assets that produce effectively connected earnings and profits, which is the base for the branch profits tax, the regulations define U.S. liabilities as liabilities that produce deductions that reduce effectively connected earnings and profits.

Under the regulations, a foreign corporation's U.S. liabilities may shift as a function of the amount of profits generated by its U.S. assets relative to the profits generated by its foreign assets. Thus, if the U.S. assets have a higher profit rate than the foreign assets, the U.S. assets will attract more liabilities than the foreign assets. In such a case, U.S. net equity may not increase sufficiently to reduce the divided equivalent amount to zero even though all the current earnings remain invested in the U.S. trade or business. On the other hand, if the foreign assets have a higher profit rate than the U.S. assets, a corporation may not have a dividend equivalent amount even though it repatriates some of its current earnings. These results occur because the regulations view liabilities as fungible, *i.e.*, as supporting all the assets of the foreign corporation. If U.S. assets increase relative to foreign assets, the U.S. trade or business would be treated as assuming a larger share of the foreign corporation's worldwide liabilities. If the U.S. trade or business were conducted in a separate domestic subsidiary, such assumption would be treated as a dividend distribution by the subsidiary to its foreign parent to the extent of the liabilities assumed. If the U.S. trade or business is conducted in a branch, the assumption of additional liabilities by the branch will reduce U.S. net equity and give rise to a dividend equivalent amount. Similarly, if foreign assets increase relative to U.S. assets, the foreign operations can be viewed as assuming a larger share of the corporation's worldwide liabilities. In that case the assumption is equivalent to a capital contribution to the U.S. trade

or business, and results in an increase in U.S. net equity.

Section 1.884–1T(f)(1) defines the term "effectively connected earnings and profits" to mean earnings and profits attributable to income that is effectively connected with the conduct of a U.S. trade or business. The regulations do not reflect the amendment in H.R. 4333, S. 2238, 100th Cong., 2d Sess. (hereinafter the "technical corrections bill") dealing with certain unearned premium reserves.

Section 1.884–1T(f)(2) enumerates certain types of effectively connected income that do not produce effectively connected earnings and profits. This income includes certain income derived from the operation of ships or aircraft that is excluded from gross income under section 883(a)(1) or 883(a)(2), gain on the disposition of stock of a domestic corporation that is treated as a U.S. real property interest, and income that is exempt from tax under section 892.

Section 1.884–1T(f)(3) requires that, in determining a foreign corporation's effectively connected earnings and profits, deductions and other adjustments be allocated and apportioned under the principles of § 1.861–8 between income that is effectively connected with a U.S. trade or business and produces effectively connected earnings and profits and income that is effectively connected with a U.S. trade or business but does not produce effectively connected earnings and profits.

Section 1.884–1T(g) provides special rules for the calculation of effectively connected earnings and profits and U.S. assets of foreign corporations carrying on an insurance business in the United States.

Consistent with Notice 87–56, 1987–2 C.B. 367, § 1.884–1T(h) provides rules for the application of the branch profits tax to a foreign corporation that is a qualified resident (as defined in § 1.884–5T) of a country with which the United States has an income tax treaty. Section 1.884–1T(h)(1) provides that a foreign corporation that is a resident of a country with which the United States has an income tax treaty may claim an exemption or rate reduction with respect to a dividend equivalent amount for the taxable year only if either (1) the foreign corporation is a qualified resident of the treaty country because its stock is primarily and regularly traded on an established securities market in its country of residence or in the United States (within the meaning of § 1.884–5T(d)), or it is engaged in an active trade or business in its country of residence (within the meaning of § 1.884–5T(e)), or it has obtained a ruling described in § 1.884–5T(f), or (2) it meets, with respect to the dividend equivalent amount, the requirements of a limitation on benefits article in an income tax treaty and the article entered into force after December 31, 1986. A foreign corporation that is a qualified resident of its country of residence because it meets the stock ownership and base erosion requirements of § 1.884–5T (b) and (c) is required to establish its qualified residence status for a 36-month period which includes the year in which the dividend equivalent amount arises. A foreign corporation that fails that requirement and is not otherwise a qualified resident on other grounds may claim treaty benefits only with respect to the portions of its dividend equivalent amount that are attributable; on a last-in-first-out basis, to taxable years in which it was a qualified resident.

Section 1.884–1T(h)(3) provides that the branch profits tax will not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the qualified residence requirements (including the 36-month test where applicable) for a country listed in that section, so long as the income tax treaty between the United States and the country, as in effect on January 1, 1987, remains in effect and is not modified by subsequent agreement to expressly provide for the imposition of the branch profits tax. The effect on the branch profits tax of non-discrimination provisions in income tax treaties is currently under consideration in connection with the forthcoming Treasury Department study of the tax treaty program.

Section 1.884–1T(h)(4) provides that a foreign corporation that is a qualified resident of a country with which the United States has an income tax treaty but that is not entitled to exemption from the branch profits tax under § 1.884–1T(h)(3) may claim treaty benefits such as a reduction in the rate of the branch profits tax. The section lists the rate of tax on qualified residents under existing income tax treaties and provides rules for corporations that are qualified residents of Canada.

Section 1.884–1T(h)(5) reserves with respect to benefits under treaties other than income tax treaties (such as Friendship, Commerce and Navigation treaties) in view of provisions in the technical corrections bill.

Section 1.884–1T(i) provides that, if a foreign corporation and a domestic corporation are stapled entities within the meaning of section 269B(c)(2), the foreign corporation shall nonetheless be treated as a foreign corporation for all purposes of the branch tax.

Special Rules for the Termination or Incorporation of a U.S. Trade or Business or the Liquidation or Reorganization of a Foreign Corporation or its Domestic Subsidiary

Section 1.884–2T contains rules announced in Notice 86–17, 1986–2 C.B. 379. It provides special exemption rules for a foreign corporation that completely terminates all of its U.S. trade or business as well as rules for the application of the branch profits tax in the case of the tax-free reorganization or liquidation of a foreign corporation with a U.S. trade or business, the tax-free incorporation of a U.S. trade or business of a foreign corporation, and certain transactions with respect to a domestic subsidiary of a foreign parent corporation.

Under § 1.884–2T(a)(1), a foreign corporation's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits are extinguished as a result of a complete termination of all of the U.S. trade and business of a foreign corporation.

Section 1.884–2T(a)(2) states the four conditions for a foreign corporation to completely terminate all of its U.S. trade and business with respect to a particular taxable year: (1) At the end of that year, it must have no U.S. assets; (2) for the following three taxable years, it must have no income that is effectively connected with the conduct of a U.S. trade or business (other than by reason of section 864 (c)(6) or (c)(7)); (3) for the following three taxable years, neither itself nor a related corporation may use, directly or indirectly, any of the U.S. assets of the terminated U.S. trades or businesses, or property attributable to such property or to the foreign corporation's effectively connected earnings and profits earned in the year of complete termination of a U.S. trade or business; and (4) the foreign corporation must waive the period of limitations for the year of complete termination.

Under § 1.884–2T(b), a foreign corporation may elect, for a maximum two-year period, to treat marketable securities as U.S. assets. This election is a special relief measure designed for foreign corporations that may have liquidated all of their U.S. assets or retired them from use in a U.S. trade or business but continue to hold cash or property with the expectation of continuing a U.S. trade or business in the near future. The procedures applying to this election, including transitional

rules, and its effects, are similar to the election for expansion capital in § 1.884–1T(d)(11).

Section 1.884–2T(c) recognizes that the branch profits tax generally should not be imposed with respect to the transfer of U.S. assets by a foreign corporation merely as a result of a non-divisive tax-free reorganization (into a domestic or foreign corporation) or liquidation described in section 381(a). On the other hand, § 1.884–2T(c) reflects the fact that a foreign corporation that reorganizes does not completely terminate its U.S. trade and business and, therefore, cannot escape branch profits tax liability under the complete termination rules. That section provides rules for computing the dividend equivalent amount of the foreign corporation and its transferee in the year of the transaction and subsequent taxable years.

Consistent with Notice 86–17, 1986–2 C.B. 379, § 1.884–2T(d) provides that a foreign corporation may transfer part or all of its U.S. assets to a domestic corporation in a section 351(a) transfer without branch profits tax consequences provided that the foreign corporation owns, after the transaction, and without regard to other transferors, at least 80 percent of the voting stock and value of the transferee, the transferee agrees to be allocated an amount of the foreign corporation's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits in proportion to the U.S. assets transferred, and the foreign corporation agrees to an increase in its dividend equivalent amount in the event of its disposition of the stock or securities of the transferee received in the exchange.

Section 1.884–2T(e) provides special rules for certain transactions with respect to a domestic subsidiary of a foreign corporation.

Interaction of the Branch Profits Tax and Second-Tier Withholding

Section 1.884–3T reserves with respect to the interaction of the branch profits tax and second-tier withholding in view of the technical corrections bill.

Branch-Level Interest Tax

Section 1.884–4T(a) provides that, for purposes of sections 871, 881, 1441 and 1442, interest paid by a U.S. trade or business (within the meaning of § 1.884–4T(b)) of a foreign corporation that is engaged in trade or business in the United States is treated as paid by a domestic corporation. The technical corrections bill would make § 1.884–4T(a) effective for all purposes of Subtitle A of the Internal Revenue Code but this provision has not been incorporated in the regulations. Such interest is subject to withholding under section 1441 or 1442 unless exempt under the Code or an income tax treaty. A foreign corporation is treated as engaged in trade or business in the United States if, during the taxable year, it has U.S. assets (as defined in § 1.884–1T(d)) or gross income that is effectively connected with the conduct of a U.S. trade or business. The regulations do not incorporate the technical corrections bill's provision that would exempt interest paid by an international organization from the branch tax on interest.

Section 1.884–4T(a)(2) provides generally that, if the interest allowable as a deduction under § 1.882–5 in computing a foreign corporation's effectively connected taxable income exceeds certain interest paid by a U.S. trade or business of the foreign corporation, the excess shall be treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and shall be subject to tax under section 881(a).

Section 1.884–4T(a)(3) provides that the term "interest" includes original issue discount, as defined in section 1273(a)(1).

Section 1.884–4T(b)(1) defines the term "interest paid by a U.S. trade or business" as interest that is paid with respect to one of four classes of liabilities. The first class consists of liabilities identified as liabilities of a U.S. trade or business on the foreign corporation's books. The remaining classes generally consist of liabilities that are treated as liabilities of a U.S. trade or business for regulatory or income tax purposes, that are predominantly secured by U.S. assets, or that give rise to certain nondeductible interest, such as capitalized interest, that is related to U.S. assets.

Section 1.884–4T(b)(2) generally requires that interest with respect to the class of liabilities that is booked to the U.S. trade or business must be treated as interest paid by a U.S. trade or business in all subsequent years.

Section 1.884–4T(b)(3) provides generally that liabilities in the class of liabilities booked to the U.S. trade or business will not give rise to interest paid by a U.S. trade or business of a foreign corporation if the foreign corporation receives a tax benefit from a foreign country with respect to the interest that is inconsistent with the treatment of the interest as paid by a U.S. trade or business, the liability is incurred in the ordinary course of a trade or business conducted by the foreign corporation outside the United States (subject to a special rule for bank deposits over $100,000), or the liability is predominantly secured by assets that are not U.S. assets.

Section 1.884–4T(b)(4) provides that interbranch liabilities are not treated as interest paid by a U.S. trade or business.

Section 1.884–4T(b)(5) generally requires that if 80 percent or more of a foreign corporation's assets are U.S. assets, the amount of interest paid by a U.S. trade or business will be increased, if necessary, to equal the foreign corporation's interest deduction under § 1.882–5 and its nondeductible interest. Where a foreign corporation conducts its business primarily in the United States, it comports more closely with economic reality to treat the foreign corporation's interest payments as being made from a domestic corporation to the actual recipients of the interest payments (*i.e.*, as interest paid by a U.S. trade or business) rather than to the foreign corporation (*i.e.*, as excess interest).

Section 1.884–4T(b)(6) generally provides for a reduction in interest paid by a U.S. trade or business of a foreign corporation where such interest exceeds the amount of the interest deduction allowed to the foreign corporation under § 1.882–5 and the amount of any nondeductible interest paid by a U.S. trade or business during the taxable year. Ordering rules are given for the reduction.

Section 1.884–4T(b)(7) permits a foreign corporation to elect to reduce its excess interest by the amount of interest paid by a U.S. trade or business that accrues in a different taxable year than the year in which the interest is paid. Under this election, the interest is treated as interest paid by a U.S. trade or business in the earlier of the year it is paid or accrues. This election prevents the same interest payment from being included as both interest paid by a U.S. trade or business and excess interest.

Section 1.884–4T(b)(8) describes the effect of treaties on interest paid by a U.S. trade or business. Section 1.884–4T(b)(8)(i) generally provides that relief is available under the payor foreign corporation's income tax treaty only if the foreign corporation is a qualified resident (as defined in § 1.884–5T(a)) of the treaty country for the taxable year in which the interest is paid or for the prior year and the protion of the current year that ends with the date of payment, or meets the requirements of the treaty's limitation on benefits article and the article entered into force after December 31, 1986. Section 1.884–4T(b)(8)(ii) generally provides that relief is available under a recipient foreign

corporation's income tax treaty under the tests described in the preceding sentence applied with respect to the recipient. Section 1.884–4T(b)(8)(iii) reserves with respect to the effect of treaties other than income tax treaties (such as Friendship, Commerce and Navigation treaties) on interest paid by a U.S. trade or business in view of the pending technical corrections bill.

Section 1.884–4T(c) provides rules for the computation of the tax on excess interest. Section 1.884–4T(c)(2) provides generally that a foreign corporation's distributive share of partnership interest will reduce the foreign corporation's excess interest. Under this rule, interest paid by the partnership is treated as if it were paid directly by the foreign corporation for purposes of determining the amount of the foreign corporation's excess interest, and interest paid by the partnership is not subject to taxation both under section 871(a) or 881 and as excess interest.

Section 1.884–4T(c)(3) provides that excess interest of a foreign corporation that is a qualified resident of a treaty country is taxed at a rate not exceeding the reduced rate of tax or exemption provided under such treaty for interest paid by a domestic corporation to a resident of the treaty country. However, exemptions or reduced rates of tax under treaty provisions dealing with interest paid by a resident of the treaty country do not apply to excess interest. The regulations reserve with respect to treaties other than income tax treaties. Section 1.884–4T(c)(3) does not address the effect, if any, of non-discrimination provisions in income tax treaties. This issue is presently under consideration in connection with the forthcoming Treasury Department study of the tax treaty program.

Qualified Resident

Section 1.884–5T(a) provides that a foreign corporation that is a resident of a foreign country for purposes of an income tax treaty if a qualified resident of that country if either (1) it meets a stock ownership and base erosion test; (2) it is publicly-traded in its country of residence or in the United States; (3) it is engaged in the active conduct of a trade or business in its country of residence; or (4) it obtains a ruling that its establishment or maintenance in its country of residence is not for the purpose of obtaining treaty benefits.

Section 1.884–5T(b)(1) provides generally that a foreign corporation meets the ownership test if at least 50 percent (by value) of its stock is owned by individual residents of the foreign corporation's country of residence, or by U.S. citizens or residents, during at least half of the number of days in the foreign corporation's taxable year and it obtains the documentation required under § 1.884–5T(b)(3) to show that the ownership test has been met. The technical corrections bill would require more than 50 percent qualified ownership.

Section 1.884–5T(b)(2) sets forth constructive ownership rules under which stock owned by entities is treated as owned by individuals. Section 1.884–5T(b)(2)(i) provides rules for determining the extent to which stock owned indirectly by an individual through a corporation, partnership, trust or estate is treated as being owned by the individual. Section 1.884–5T(b)(2)(ii) treats stock owned by the government of a country as if it were owned by individual residents of that country.

Section 1.884–5T(b)(2)(iii) generally treats stock owned by a corporation that is publicly traded in its country of residence as if it were owned by individual residents of that country. Section 1.884–5T(b)(2)(iv) generally treats a class of stock of a corporation that is publicly traded in the corporation's country of residence as if it were owned by individual residents of that country.

Section 1.884–5T(b)(3) indicates the documentation a foreign corporation is required to obtain in order to establish that it satisfies the ownership test. This documentation may take one of two forms: Individual documentation (certification of the individual's direct or indirect stock ownership and residency) or an intermediary verification statement (certification by an intermediary that owns (directly or indirectly) stock of the foreign corporation that it holds individual documentation from an indirect individual shareholder of the foreign corporation). The purpose of the intermediary verification statement is to permit an individual who owns stock in a foreign corporation through a nominee, holding company, or other entity to preserve anonymity vis-a-vis the foreign corporation. Where stock of a foreign corporation is held indirectly by an individual, any intermediaries standing in the chain of the individual's ownership of stock in a foreign corporation must furnish an intermediary ownership statement declaring its direct ownership of another intermediary in the chain of ownership or its direct ownership of the stock of the foreign corporation.

Section 1.884–5T(c) describes the base erosion test, which generally requires that not more than 50 percent of a foreign corporation's income for the taxable year be used to meet liabilities to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign corporation's country of residence and who are not U.S. citizens or residents (or, in the case of corporations, qualified residents).

Section 1.884–5T(d) prescribes rules under which a foreign corporation whose stock is primarily and regularly traded on one or more established securities markets in the foreign corporation's country of residence or the United States is treated as a qualified resident of its country of residence. In addition, a foreign corporation is treated as a qualified resident of its country of residence if 90 percent of its stock (by value and voting power) is owned by another corporation that is a resident of the same foreign country and whose stock is primarily and regularly traded on one or more established securities markets in that country or in the United States.

Section 1.884–5T(d)(2)(i) defines the term "established securities market" to include a foreign securities exchange that is officially recognized or supervised by a governmental authority in the country in which the exchange is located, is the principal exchange in that country, and has an annual share turnover exceeding $1 billion. A domestic exchange that is a national securities exchange registered under the Securities Act of 1934 and a domestic over-the-counter market are also treated as established securities markets.

Section 1.884–5T(d)(2)(v) gives the Commissioner authority to treat a foreign securities exchange that does not come within the definition of an established securities market but has the attributes of such a market as an established securities market. Similarly, § 1.884–5T(d)(2)(vi) gives the Commissioner authority to disqualify a foreign securities exchange that meets the definition of an established securities exchange but does not have adequate listing, financial disclosure or trading requirements, or does not enforce such requirements.

Section 1.884–5T(d)(3) provides that stock of a foreign corporation is primarily traded on an established securities market in its country of residence if more than 80 percent of the voting power and value of the stock of the foreign corporation is listed and regularly traded on one or more established securities markets and the volume of trading (on a class-by-class basis) on one or more established securities markets in the country of residence and in the United States exceeds the volume of trading on

established securities markets in any other foreign country.

Section 1.884–5T(d)(4)(i) states that a class of stock is regularly traded on an established securities market if stock in that class is traded, other than in *de minimis* quantities, on at least 60 days during the taxable year and there is a turnover during the taxable year equal to at least 30 percent of the shares in the class. In the case of a foreign corporation with 2,500 or more shareholders of record, the turnover requirement is reduced to 10 percent.

Under § 1.884–5T(d)(4)(ii), a class of stock that would otherwise be treated as regularly traded will not be treated as regularly traded if 100 or fewer persons own 50 percent or more of the outstanding shares of such class.

Section 1.884–5T(d)(4)(iii) contains an anti-abuse rule that disregards trades between related persons and trades conducted so that the class will meet the regularly traded requirement.

Section 1.884–5T(e) generally provides that a foreign corporation is treated as a qualified resident of its country of residence if it has a substantial presence in that country and conducts a U.S. trade or business that is an integral part of a trade or business that is actively conducted in that country.

Section 1.884–5T(e)(2) states that a foreign corporation is engaged in the active conduct of a trade or business if it meets the requirements of the regulations under section 367(a)(3). Special rules are provided for banks and insurance companies.

Under § 1.884–5T(e)(3), whether a foreign corporation has a substantial presence in its country of residence is determined by comparing the ratio of the assets, gross income and payroll expense of its active trades or businesses in its country of residence to its worldwide assets, gross income and payroll expenses. If each ratio is at least equal to 20 percent and the average of the ratios exceeds 25 percent, the foreign corporation has a substantial presence in its country of residence.

Section 1.884–5T(e)(4)(i) provides that a U.S. trade or business of a foreign corporation is an integral part of a trade or business that is actively conducted by the foreign corporation in its country of residence if the businesses are complementary and mutually interdependent steps in the production and sale or lease of goods, or the performance of services. If the U.S. trade or business sells goods that are not manufactured, grown or extracted by the foreign corporation in its country of residence, the business in no event shall be treated as an integral part of a trade or business actively conducted in the foreign corporation's country of residence if the foreign corporation does not take physical possession of the goods in its country of residence.

Section 1.884–5T(e)(4)(ii) treats a U.S. trade or business as an integral part of a trade or business that is actively conducted by a foreign corporation in its country of residence if the type of goods sold or services performed by the trade or business are substantially sold for consumption or disposition (or performed) in the foreign corporation's country of residence.

Section 1.884–5T(f) generally gives the Commissioner authority to rule that a foreign corporation will be treated as a qualified resident of its country of residence if the Commissioner determines that the establishment or maintenance of the foreign corporation in its country of residence does not have as one of its principal purposes obtaining benefits under the income tax treaty between the United States and that country.

Special Analyses

It has been determined that this temporary regulation 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 for temporary regulations. Therefore, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Richard M. Elliott 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.

List of Subjects

26 CFR 1.861.1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805. * * * Sections 1.884–0T through 1.884–5T also issued under 26 U.S.C. 884(g). * * *

Section 1.884–1T(d) also issued under 26 U.S.C. 884(c)(2)(A). * * * Section 1.884–1T(e) also issued under 26 U.S.C. 884(c)(2)(B) * * *

Section 1.884–1T(d)(13)(i) also issued under 26 U.S.C. 884(c)(2). * * * Section 1.884–5T (e) and (f) also issued under 26 U.S.C. 884(e)(4)(C). * * *

Par. 2. New §§ 1.884–0T through 1.884–5T are added immediately following § 1.883–1 to read as follows:

§ 1.884–0T Branch Tax. (temporary)

(a) *Introduction.* Section 884 consists of three main parts: A branch profits tax on certain earnings of a foreign corporation's U.S. trade or business; a branch-level interest tax on interest paid, or deemed paid, by a foreign corporation's U.S. trade or business; and an anti-treaty shopping rule. For purposes of the regulations under section 884, the term "a U.S. trade or business" includes all the U.S. trades or businesses of a foreign corporation.

(1) *The branch profits tax.* Section 1.884–1T provides rules for computing the branch profits tax and defines various terms that affect the computation of the tax. In general, section 884(a) imposes a 30-percent branch profits tax on the after-tax earnings of a foreign corporation's U.S. trade or business that are not reinvested in a U.S. trade or business by the close of the taxable year, or are disinvested in a later taxable year. Changes in the value of the equity of the foreign corporation's U.S. trade or business are used as the measure of whether earnings have been reinvested in, or disinvested from, a U.S. trade or business. An increase in the equity during the taxable year is generally treated as a reinvestment of the earnings for the current taxable year; a decrease in the equity during the taxable year is generally treated as a disinvestment of prior year's earnings that have not previously been subject to the branch profits tax. The amount subject to the branch profits tax for the taxable year is the dividend equivalent amount. Section 1.884–2T contains special rules relating to the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(2) *The branch-level interest tax.* Section 1.884–4T provides rules for computing the branch-level interest tax. In general, interest paid by a U.S. trade or business (as defined in § 1.884–4T(b)) of a foreign corporation is treated as if it were paid by a domestic corporation and may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442. In addition, if the interest allowable as a deduction under § 1.882–5 in computing a foreign corporation's effectively connected taxable income exceeds certain interest paid by a U.S. trade or business of the foreign corporation, the excess is treated as interest paid to the foreign corporation by a wholly-owned domestic corporation and is subject to tax under section 881(a).

(3) *Qualified residents.* Section 1.884–5T provides rules for determining whether a foreign corporation is a qualified resident of a foreign country. In general, a foreign corporation must be a qualified resident of a foreign country with which the United States has an income tax treaty in order to claim an exemption or rate reduction with respect to the branch profits tax, the branch-level interest tax, and the tax on dividends paid by the foreign corporation.

(b) *Outline of topics in §§ 1.884–1T through 1.884–5T.* This paragraph lists the headings in §§ 1.884–1T through 1.884–5T.

§ 1.884–1T Branch Profits Tax. (temporary)

(a) General rule
(b) Dividend equivalent amount
  (1) Definition
  (2) Adjustment for increase in U.S. net equity
  (3) Adjustment for decrease in U.S. net equity
    (i) In general
    (ii) Limitation based on non-previously taxed accumulated effectively connected earnings and profits
  (4) Examples
(c) U.S. net equity
(d) U.S. assets
  (1) General rule
  (2) Depreciable and amortizable property
  (3) Inventory
  (4) Receivables arising from the sale of inventory, performance of services, or lease of property
  (5) U.S. real property interests
    (i) In general
    (ii) Shared appreciation loans and similar interests
  (6) Money
  (7) Installment obligations
  (8) Marketable securities
  (9) Partnership interests
    (i) General rule
    (ii) Computation of basis in partnership
    (iii) Computation of share of partnership liabilities
    (iv) Partnership operated to increase a foreign corporation's U.S. assets artificially
    (v) Example
  (10) Trusts and Estates
  (11) Election to treat expansion capital as a U.S. asset
    (i) General rule
    (ii) Treatment of income from deemed U.S. assets
    (iii) Method of election
    (iv) Ruling to permit an increase in expansion capital in cases of involuntary conversion
  (12) Losses involving U.S. assets
  (13) Property that is not a U.S. asset
    (i) Property that does not give rise to effectively connected earnings and profits
    (ii) Section 864(c)(7) property
    (iii) Assets acquired to increase U.S. net equity artificially
  (14) Examples
(e) U.S. liabilities
  (1) General rule
  (2) Liabilities of a partnership
  (3) Artificial decrease in U.S. liabilities
(f) Effectively connected earnings and profits
  (1) In general
  (2) Income that does not produce effectively connected earnings and profits
  (3) Allocation of deductions attributable to income that does not produce effectively connected earnings and profits
  (4) Examples
(g) Special rule for foreign insurance companies
(h) Corporations resident in countries with which the United States has an income tax treaty
  (1) General rule
  (2) Special rules for foreign corporations that are qualified residents on the basis of their ownership
    (i) General rule
    (ii) Rules of application
  (3) Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987
  (4) Modifications with respect to other income tax treaties
    (i) Limitation on rate of tax
    (ii) Limitations other than rate of tax
    (iii) Limitations under the Canadian treaty
  (5) Benefits under treaties other than income tax treaties
  (6) Example
(i) Stapled entities
(j) Effective date

§ 1.884–2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary (temporary).

(a) Complete termination of a U.S. trade or business
  (1) General rule
  (2) Operating rules
    (i) Definition of complete termination
    (ii) Waiver of period of limitations
    (iii) Property subject to reinvestment prohibition rule
    (iv) Related corporation
    (v) Direct or indirect use of U.S. assets
  (3) Complete termination in the case of a section 338 election
  (4) Complete termination in the case of a foreign corporation with income under section 864 (c)(6) or (c)(7)
  (5) Coordination with second-level withholding tax
(b) Election to remain engaged in a U.S. trade or business
(c) Liquidation, reorganization, etc. of a foreign corporation
  (1) Inapplicability of paragraph (a)(1) to section 381(a) transactions
  (2) Transferor's dividend equivalent amount for the taxable year in which a section 381(a) transaction occurs
    (i) U.S. net equity
    (ii) Effectively connected earnings and profits
    (iii) Waiver of period of limitations and transferee agreement
  (3) Transferor's dividend equivalent amount for any taxable year succeeding the taxable year in which the section 381(a) transaction occurs
  (4) Earnings and profits of the transferor carried over to the transferee pursuant to the section 381(a) transaction
    (i) Amount
    (ii) Retention of character
    (iii) Treatment of distributions by a domestic transferee out of non-previously taxed accumulated effectively connected earnings and profits
  (5) Determination of U.S. net equity of a transferee that is a foreign corporation
  (6) Special rules in the case of the disposition of stock or securities in a domestic transferee or in the transferor
    (i) General rule
    (ii) Operating rule
(d) Incorporation under section 351
  (1) In general
  (2) Inapplicability of paragraph (a)(1) of this section to section 351 transactions
  (3) Transferor's dividend equivalent amount for the taxable year in which a section 351 transaction occurs
    (i) U.S. net equity
    (ii) Effectively connected earnings and profits
    (iii) Limitation on dividend equivalent amount
  (4) Election to increase earnings and profits
    (i) General rule
    (ii) Amount of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee
    (iii) Effect of election on transferor
  (5) Dispositions of stock or securities of the transferee by the transferor
    (i) General rule
    (ii) Exception for certain tax-free dispositions
    (iii) Distribution governed by section 355
    (iv) Filing of statement
  (6) Example
(e) Certain transactions with respect to a domestic subsidiary
(f) Effective date

§ 1.884–3T Coordination of branch profits tax with second-tier withholding. (temporary)

§ 1.884–4T Branch-level interest tax. (temporary)

(a) General rule
(1) Tax on interest paid by a U.S. trade or business
(2) Tax on excess interest
(3) Original issue discount
(4) Example
(b) Interest paid by a U.S. trade or business
(1) Definition of interest paid by a U.S. trade or business
(2) Requirement that all interest paid with respect to certain liabilities be consistently treated
(3) Liabilities that do not give rise to interest paid by a U.S. trade or business
(4) Interbranch interest disregarded
(5) Special rule where a U.S. business constitutes 80 percent or more of a foreign corporation's business
(i) General rule
(ii) Example
(6) Special rule where interest paid exceeds deductible and non-deductible interest of a U.S. trade or business
(i) General rule
(ii) Election to specify liabilities that do not give rise to interest paid by a U.S. trade or business
(iii) Examples
(7) Election to reduce excess interest where interest is paid and accrued in different years
(i) Accrual before year of payment
(ii) Payment before year of accrual
(iii) Requirements for election
(iv) Examples
(8) Effect of tax treaties
(i) Payor's treaty
(ii) Recipient's treaty
(iii) Treaties other than income tax treaties
(iv) Effect of income tax treaties on interest paid by a partnership
(v) Examples
(c) Excess interest
(1) Reporting and payment of tax on excess interest
(2) Interest paid by a partnership
(i) General rule
(ii) Special rule for interest that is paid and accrued in different years
(3) Effect of tax treaties
(i) General rule
(ii) Provisions in income tax treaties relating to interest paid by a foreign corporation
(iii) Treaties other than income tax treaties
(4) Examples
(d) Stapled entities
(e) Effective date

§ 1.884–5T Qualified Residents. (temporary)

(a) Definition of a qualified resident
(b) Stock ownership requirement
(1) General rule
(2) Rules for determining ownership
(i) Constructive ownership
(ii) Governments treated as individual shareholders
(iii) Publicly-traded corporations treated as individual shareholders
(iv) Publicly-traded stock treated as owned by individuals
(3) Required documentation
(4) Individual documentation
(i) Statement from individual shareholder or from government or corporation treated as an individual shareholder
(ii) Certificate of residency
(5) Intermediary ownership statement
(6) Intermediary verification statement
(7) Availability of documents for inspection
(i) Retention of documents by the foreign corporation
(ii) Retention of documents by an intermediary issuing an intermediary verification statement
(8) Examples
(c) Base erosion
(d) Publicly-traded corporations
(1) General rule
(2) Established securities market
(i) General rule
(ii) Exchanges with multiple tiers
(iii) Computation of dollar value of stock traded
(iv) Definition of over-the-counter market
(v) Discretion to determine that exchange qualifies as established securities market
(vi) Discretion to determine that market does not qualify as established securities market
(3) Primarily traded
(4) Regularly traded
(i) General rule
(ii) Closely-held companies not treated as regularly traded
(iii) Anti-abuse rule
(iv) Stock traded on domestic established securities markets
(5) Stock treated as wholly-owned
(6) Burden of proof for publicly-traded corporations
(e) Active trade or business
(1) General rule
(2) Active conduct of a trade or business
(3) Substantial presence test
(4) Integral part of an active trade or business in the foreign corporation's country of residence
(i) General rule
(ii) Presumption if business principally conducted in country of residence
(f) Ruling that a foreign corporation is a qualified resident
(g) Effective date

§ 1.884–1T Branch Profits Tax (temporary).

(a) *General rule.* A foreign corporation shall be liable for a branch profits tax in an amount equal to 30 percent of the foreign corporation's dividend equivalent amount for the taxable year. The branch profits tax shall be in addition to the tax imposed by section 882 and shall be reported on a foreign corporation's income tax return for the taxable year. The tax shall be due and payable as provided in section 6151 and such other provisions of Subtitle F of the Internal Revenue Code as apply to the income tax liability of corporations. However, no estimated tax payments shall be due with respect to a foreign corporation's liability for the branch profits tax. See paragraph (h) of this section for the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty, and § 1.884–2T for the effect on the branch profits tax of the termination or incorporation of a U.S. trade or business, or the liquidation or reorganization of a foreign corporation or its domestic subsidiary.

(b) *Dividend equivalent amount*—(1) *Definition.* The term "dividend equivalent amount" means a foreign corporation's effectively connected earnings and profits (as defined in paragraph (f)(1) of this section) for the taxable year subject to the adjustments in paragraphs (b) (2) and (3) of this section. The dividend equivalent amount cannot be less than zero.

(2) *Adjustment for increase in U.S. net equity.* If a foreign corporation's U.S. net equity (as defined in paragraph (c) of this section) as of the close of the taxable year exceeds the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(3) *Adjustment for decrease in U.S. net equity*—(i) *In general.* Except as provided in paragraph (b)(3)(ii) of this section and in § 1.884–2T, if a foreign corporation's U.S. net equity as of the close of the taxable year is less than the foreign corporation's U.S. net equity as of the close of the preceding taxable year, then, for purposes of computing the foreign corporation's dividend equivalent amount for the taxable year, the foreign corporation's effectively connected earnings and profits for the taxable year shall be increased by the amount of such difference.

(ii) *Limitation based on non-previously taxed accumulated effectively connected earnings and profits.* The increase of a foreign corporation's effectively connected earnings and profits under paragraph (b)(3)(i) of this section shall not exceed the non-previously taxed accumulated effectively connected earnings and profits of the foreign corporation as of the close of the preceding taxable year. The term "non-previously taxed accumulated effectively connected earnings and profits" means the excess of the aggregate amount of effectively connected earnings and profits of a

foreign corporation for preceding taxable years over the aggregate dividend equivalent amounts for such preceding taxable years. The aggregate amount of effectively connected earnings and profits for preceding taxable years shall not include effectively connected earnings and profits for taxable years beginning before January 1, 1987.

(4) *Examples.* The principles of paragraphs (b) (2) and (3) of this section are illustrated by the following examples.

Example (1). Foreign corporation A, a calendar year taxpayer, had $1,000 U.S. net equity as of the close of 1986 and $100 of effectively connected earnings and profits for 1987. A acquires $100 of additional U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,100. In computing A's dividend equivalent amount; for 1987, A's effectively connected earnings and profits of $100 are reduced under paragraph (b)(2) of this section by the $100 increase in U.S. net equity between the close of 1986 and the close of 1987. A has no dividend equivalent amount for 1987.

Example (2). Assume the same facts as in *Example (1)* for 1987. A has no effectively connected earnings and profits for 1988. A's U.S. net equity decreases by $40 during 1988 and its U.S. net equity is $1,060 as of the close of 1988. A has a dividend equivalent amount of $40 for 1988, even though it has no effectively connected earnings and profits for 1988. A's effectively connected earnings and profits of $0 for 1988 are increased under paragraph (b)(3)(i) of this section by the $40 reduction in U.S. net equity (subject to the limitation in paragraph (b)(3)(ii) of this section of $100 of non-previously taxed accumulated effectively connected earnings and profits).

Example (3). Assume the same facts as in *Example (1)* except that A acquires $40 of U.S. assets during 1987 and its U.S. net equity as of the close of 1987 is $1,040. In computing A's dividend equivalent amount for 1987, A's effectively connected earnings and profits of $100 are reduced under paragraph (b)(2) of this section by the $40 increase in U.S. net equity between the close of 1986 and the close of 1987. A has a dividend equivalent amount of $60 for 1987.

Example (4). Assume the same facts as in *Example (3)* for 1987. For 1988, A has $125 of effectively connected earnings and profits and its U.S. net equity decreases by $50. A.'s U.S. net equity as of the close of 1988 is $990 ($1,040–$50). In computing A's dividend equivalent amount, the $125 of effectively connected earnings and profits for 1988 is not increased under paragraph (b)(3)(i) by the full amount of the $50 decrease in U.S. net equity during 1988, because the increase in effectively connected earnings and profits resulting from a decrease in U.S. net equity is limited to A's non-previously taxed accumulated effectively connected earnings and profits as of the close of 1987. A had $100 of effectively connected earnings and profits for 1987 and a dividend equivalent amount of $60 for that year, so A has $40 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1987. The increase in effectively connected earnings and profits resulting from a decrease in U.S. net equity is thus limited to $40, and the dividend equivalent amount for 1988 is $165 ($125 effectively connected earnings and profits + $40 decrease in U.S. net equity).

Example (5). (i) Foreign corporation A, a calendar year taxpayer, has $150 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1990, and has a $90 deficit in effectively connected earnings and profits for 1991. A has U.S. net equity of $450 as of the close of 1990 and U.S. net equity of $350 as of the close of 1991 (*i.e.*, a $100 decrease in U.S. net equity). A has a dividend equivalent amount of $10 for 1991, resulting from A's deficit of $90 in effectively connected earnings and profits for 1991 increased by $100, the decrease in A's U.S. net equity during 1991. A portion of the reduction in U.S. net equity in 1991 is attributable to A's deficit in effectively connected earnings and profits for that year and triggers a dividend equivalent amount only to the extent the reduction in U.S. net equity exceeds the current year deficit in effectively connected earnings and profits for 1991.

(ii) For 1992, A has no effectively connected earnings and profits and its U.S. net equity decreases by $150 (to $200) during the year. Because A has no effectively connected earnings and profits for 1992, its dividend equivalent amount for the year is equal to the decrease in U.S. net equity during the year ($150) limited to the amount of its non-previously taxed accumulated effectively connected earnings and profits as of the close of the preceding taxable year. A has $50 of non-previously taxed accumulated effectively connected earnings and profits as of the close of 1991 (*i.e.*, its non-previously taxed accumulated effectively connected earnings and profits of $150 as of the close of 1990 less its $90 deficit in earnings and profits for 1991 less its dividend equivalent amount of $10 for 1991) and therefore has a dividend equivalent amount of $50 for 1992.

Example (6). Foreign corporation A, a calendar year taxpayer, had a deficit in effectively connected earnings and profits of $100 for 1987 and $100 for 1988, and has $90 of effectively connected earnings and profits for 1989. A had $2,000 U.S. net equity as of the close of 1988 and has $2,000 U.S. net equity as of the close of 1989. A has a dividend equivalent amount of $90 for 1989, its effectively connected earnings and profits for the year, even though it has a net deficit of $110 in effectively connected earnings and profits for the period 1987–1989.

(c) *U.S. net equity.* The term "U.S. net equity" means, as of the close of the taxable year, the U.S. assets (as defined in paragraph (d)(1) of this section) of a foreign corporation on such date reduced (including below zero) by the U.S. liabilities (as defined in paragraph (e)(1) of this section) of the foreign corporation on such date.

(d) *U.S. assets*—(1) *General rule.* Except as provided in paragraphs (d)(13) and (g) of this section, the term "U.S. assets" means—

(i) Property of a corporation that is described in paragraphs (d) (2) through (12) of this section and is held by the foreign corporation on the day on which a determination of whether the property is a U.S. asset is made (the "determination date"), and

(ii) Property of a foreign corporation (other than property described in paragraph (d)(1)(i) of this section) that is held on the determination date if all income from the use, and all gain from the disposition, of the property on the determination date is effectively connected with the conduct of a trade or business in the United States (or would be effectively connected if the property were used or sold on that date). Except as otherwise specifically provided in this paragraph (d), the amount of a U.S. asset shall be the adjusted basis of property for purposes of computing earnings and profits, and the taxable year referred to in this paragraph (d) shall be the taxable year in which the determination date falls. Income that is effectively connected with the conduct of a trade or business in the United States includes income that is treated as effectively connected income under any provision of the Code. See paragraph (d)(13)(ii) of this section regarding property described in section 864(c)(7).

(2) *Depreciable and amortizable property.* Depreciable personal property (other than a U.S. real property interest described in section 897(c)(1)(A)(i)) and amortizable intangible property shall be treated as a U.S. asset of a foreign corporation in the same proportion that the amount of the depreciation or amortization with respect to the property that is allowable as a deduction, or is includible in cost of goods sold, for the taxable year in computing the taxable income of the foreign corporation that is effectively connected with the conduct of a trade or business in the United States bears to the total amount of depreciation or amortization computed for the taxable year with respect to the property.

(3) *Inventory.* Inventory property (as defined in section 865(h)(1)) held on the determination date shall be treated as a U.S. asset in the same proportion that the anticipated amount of gross sales from the sale or exchange of the property that is reasonably anticipated to be effectively connected with the conduct of a trade or business in the United States bears to the anticipated total amount of gross sales from the sale or exchange of the property.

(4) *Receivables arising from the sale of inventory, performance of services, or*

lease of property. An account or note receivable (whether or not bearing stated interest) with a maturity not exceeding six months that arises from the sale or exchange of inventory property (as defined in section 865(h)(1)) or from the performance of services or the leasing of property in the ordinary course of a foreign corporation's trade or business shall be treated as a U.S. asset of the foreign corporation in the same proportion that the amount of gross income represented by the receivable that is effectively connected with the conduct of a trade or business in the United States bears to the total amount of gross income represented by the receivable.

(5) *U.S. real property interests*—(i) *In general.* A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a U.S. asset.

(ii) *Shared appreciation loans and similar interests.* [Reserved]

(6) *Money.* Money needed in a U.S. trade or business within the meaning of § 1.864–4(c)(2)(iii)(*a*) shall be treated as a U.S. asset.

(7) *Installment obligations.* An obligation received in connection with the installment sale (as defined in section 453(b)) of a U.S. asset shall be treated as a U.S. asset in an amount equal to the sum of—

(i) The amount of income that would be effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States if the obligation were satisfied in full on the determination date and

(ii) The basis of the obligation on such date (as determined for purposes of section 453B) attributable to the amounts that would be treated as income that is effectively connected with the conduct of a trade or business in the United States, if the obligation were satisfied in full on the determination date.

(8) *Marketable securities.* Except as provided in paragraph (d)(11) of this section (relating to expansion capital) and in § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business, or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), a marketable security shall be treated as a U.S. asset only if all of the income derived from such security during the taxable year is effectively connected with the conduct of a trade or business in the United States and either—

(i) Any gain or loss from the sale or exchange of the security on the determination date would be effectively connected with the conduct of a trade or business in the United States, or

(ii) Such security had a yield for the taxable year (or for the portion of the taxable year during which the security was held) of at least 50 percent of the average of the monthly Federal short-term rates (as determined under section 1274(d)(1)(C)(i)) during such period. The yield of a marketable security means, for purposes of this paragraph (d)(8), the ratio of gross amounts derived by the foreign corporation during the taxable year from the security (including income accrued or imputed with respect to such security under any provision of the Code, or regulations thereunder) to the adjusted basis of such security on the determination date. For purposes of this paragraph (d), the term "marketable security" means a security (including stock) that is part of an issue any portion of which is regularly traded on an established securities market (within the meaning of § 1.884–5T(d) (2) and (4)) and a deposit described in section 871(i)(3) (A) or (B).

(9) *Partnership interests*—(i) *General rule.* Except as provided in paragraph (d)(9)(iv) of this section, a foreign corporation that is a partner in a partnership shall be treated as having a U.S. asset in an amount equal to the product of the foreign corporation's adjusted basis in the partnership interest (as determined under paragraph (d)(9)(ii) of this section) and the ratio of its distributive share of partnership gross income for the taxable year that is effectively connected with the conduct of a trade or business in the United States to its distributive share of all partnership gross income for the taxable year.

(ii) *Computation of basis in partnership.* For purposes of this section, a foreign corporation's adjusted basis in a partnership interest shall be the foreign corporation's basis in such interest (as determined under section 705)—

(A) Reduced by the foreign corporation's share of the liabilities of the partnership (as determined under section 752),

(B) Increased by the foreign corporation's share of the liabilities of the partnership (as determined under paragraph (d)(9)(iii) of this section), and

(C) Adjusted to take into account any differences between the foreign corporation's distributive share of partnership income, gain, or loss for purposes of computing the taxable income of the foreign corporation and the foreign corporation's distributive share of partnership income, gain, or loss from the partnership for purposes of computing the earnings and profits of the foreign corporation.

(iii) *Computation of share of partnership liabilities.* For purposes of this section, a foreign corporation shall share in any liability of a partnership in the same proportion that it shares for income tax purposes in the interest expenses attributable to such liability for the taxable year.

(iv) *Partnership operated to increase a foreign corporation's U.S. assets artificially.* If the district director determines that one of the principal purposes of the acquisition of a partnership interest or the acquisition or ownership of certain properties by a partnership is to increase the U.S. assets of a foreign corporation artificially, the district director may compute the portion of the foreign corporation's interest in the partnership that is a U.S. asset using a method that more accurately reflects the foreign corporation's interest in partnership properties that would be U.S. assets if held directly by the foreign corporation. Whether a partnership interest is acquired, or partnership property is acquired or owned, for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered include whether the partnership conducts unrelated businesses or whether the partnership accumulates investment property unrelated to its trade or business or liquid assets in excess of the reasonable needs of its business. For purposes of this paragraph (d)(9)(iv), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(v) *Example.* The application of paragraph (d)(9)(iv) of this section is illustrated by the following example.

Example. Foreign corporation A is a partner in partnership X and is entitled to 50 percent of the income of X and 50 percent of the value of all property of X upon X's liquidation. X is engaged in an active U.S. real estate business which, during the taxable year, produces $100 of gross income that is effectively connected with the conduct of a trade or business in the United States. In the same taxable year, X acquires securities (from funds that are either generated by its business, borrowed or contributed) that produce $50 of gross income not effectively connected with the conduct of a trade or business in the United States. The securities are unrelated to the real estate business and substantially exceed the reasonable needs of the business. The real estate and the securities each have an adjusted basis of $1,000. Under paragraph (d)(9)(i) of this section, two-thirds (50/75) of A's distributive share of partnership gross income is effectively connected with the conduct of a trade or business in the United States, and two-thirds of A's basis in its partnership interest (as determined under paragraph

(d)(9)(ii) of this section) would therefore be treated as a U.S. asset. However, because the securities acquired by X are unrelated to X's real estate business and exceed the reasonable needs of the business, the district director may determine that a principal purpose of X's acquisition of the securities is to increase artificially the U.S. assets of A. The district director may, therefore, compute the portion of A's interest in X that is treated as a U.S. asset by, for example, using the ratio of A's pro rata share of the adjusted basis of the property of X that produces income that is effectively connected with the conduct of a trade or business in the United States ($500) to A's pro rata share of all property of X ($1,000). As a result, A would be treated as having a U.S. asset in an amount equal to half of A's basis in X (as determined under paragraph (d)(9)(ii) of this section).

(10) *Trusts and Estates.* [Reserved]

(11) *Election to treat expansion capital as a U.S. asset*—(i) *General rule.* A foreign corporation may elect, for any taxable year, to treat as U.S. assets marketable securities (as defined in paragraph (d)(8) of this section) that are not otherwise U.S. assets provided that the fair market value of each such security on the date the security is identified as a U.S. asset under paragraph (d)(11)(iii) of this section is not less than its adjusted basis on such date. The adjusted basis of marketable securities that may be treated as U.S. assets for any taxable year shall not exceed 25 percent of the sum of the foreign corporation's effectively connected earnings and profits for the taxable year and the non-previously taxed accumulated effectively connected earnings and profits attributable to the two preceding taxable years. The securities must be held for the entire taxable year following the year for which the election is made or, if disposed of during that taxable year, must be replaced on the date of disposition by other marketable securities that are purchased on or before such date, or are received in exchange for the securities that have been disposed of, and the fair market value of which as of the date of substitution is not less than their adjusted basis.

(ii) *Treatment of income from deemed U.S. assets.* The income or gain from marketable securities subject to an election under this paragraph (d)(11) that arises in the taxable year following the taxable year for which the election is made shall be treated as effectively connected with the conduct of a trade or business in the United States (other than for purposes of section 864(c)(7)), and losses from the disposition of such marketable securities shall be allocated entirely to income that is effectively connected with the conduct of a trade or business in the United States. The marketable securities that are held on the last business day of the following taxable year shall be treated as sold for their fair market value on that day, and any gain (but not loss) and accrued interest shall be taken into account in such following taxable year as income that is effectively connected with the conduct of a trade or business in the United States. The adjusted basis of such property shall be increased by the amount of any gain recognized by reason of this paragraph (d)(11).

(iii) *Method of election.* An election under this paragraph (d)(11) to treat marketable securities as U.S. assets may be made only with respect to securities identified on the books and records of the U.S. trade or business within 30 days after the close of the taxable year for which the election is made. The election shall be made by the foreign corporation for any taxable year by attaching to its income tax return for the taxable year a statement—

(A) Identifying the marketable securities that it elects to treat as U.S. assets under this paragraph (d)(11),

(B) Setting forth the adjusted bases of such securities, and

(C) Agreeing to treat any income, gain or loss from such securities (or replacement securities) as provided in paragraph (d)(11)(ii) of this section. Such statement must be filed on or before the due date (including extensions) of the foreign corporation's income tax return for the taxable year. For taxable years ending on or before December 1, 1988, the election may be made, and securities identified on the books and records of the foreign corporation, on the later of the date on which the return is due (including extensions) or 120 days after September 2, 1988.

(iv) *Ruling to permit an increase in expansion capital in cases of involuntary conversion.* If property that is a U.S. asset of a foreign corporation is compulsorily or involuntarily converted into property not similar or related in service or use to the converted property, the foreign corporation may apply to the Commissioner for a ruling to increase the amount of marketable securities that may be treated as U.S. assets. The Commissioner may prescribe terms and conditions for the treatment of marketable securities as U.S. assets under this paragraph (d)(11)(iv).

(12) *Losses involving U.S. assets.* If a foreign corporation sustains a loss with respect to property that is a U.S. asset and is not allowed a deduction under section 165 for the entire amount of the loss because there exists a reasonable prospect of recovering compensation for the loss, the property shall be treated as a U.S. asset from the date of the loss in an amount equal to its adjusted basis immediately before the loss reduced (but not below zero) by—

(i) The amount of any deduction claimed under section 165 by the foreign corporation with respect to the loss and

(ii) Any compensation received with respect to the loss.

(13) *Property that is not a U.S. asset*—(i) *Property that does not give rise to effectively connected earnings and profits.* U.S. assets shall not include property of a foreign corporation if, on the determination date, income from the use of the property, or gain or loss from the disposition of the property, would be described in paragraph (f)(2) of this section (relating to certain income that does not produce effectively connected earnings and profits).

(ii) *Section 864(c)(7) property.* U.S. assets shall not include property that would qualify as a U.S. asset under the provisions of paragraph (d)(1) of this section solely by reason of section 864(c)(7) (relating to the tax treatment of property that ceases to be used or held for use in connection with a U.S. trade or business).

(iii) *Assets acquired to increase U.S. net equity artificially.* U.S. assets shall not include money or property acquired or used by a foreign corporation if one of the principal purposes of such acquisition or use is to increase artificially the U.S. assets of a foreign corporation on the determination date. Whether money or property is acquired or used for such purpose will depend upon all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes in acquiring or using such property is to increase artificially the U.S. assets of a foreign corporation include the length of time during which the asset was used in a U.S. trade or business, whether the asset was acquired from, or disposed of to, a related person, and whether the aggregate value of the U.S. assets of the foreign corporation increased temporarily on the determination date. For purposes of this paragraph (d)(13)(iii), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(14) *Examples.* The principles of this paragraph (d) are illustrated by the following examples:

Example (1). Foreign corporation A, a calendar year taxpayer, is engaged in a trade or business in the United States. A owns equipment that is used in its manufacturing business in country X and in the United

States. The equipment has an adjusted basis (for purposes of computing earnings and profits) of $100 at the beginning of 1987. Under § 1.861–8, A's depreciation deduction is allocated to sales income and is apportioned 70 percent to income that is effectively connected with the conduct of a trade or business in the United States and 30 percent to income that is not effectively connected with the conduct of a trade or business in the United States. A's depreciation deduction (for purposes of computing earnings and profits) with respect to the equipment is $10. As of the close of 1987, the machine is treated as a U.S. asset with an adjusted basis of $63 (*i.e.*, 70 percent of $100 reduced by $7 of depreciation in 1987).

Example (2). (i) For 1987, foreign corporation A, a calendar year taxpayer, has $100 of effectively connected earnings and profits and has no non-previously taxed accumulated effectively connected earnings and profits. A elects under paragraph (d)(11) of this section to treat marketable securities with an adjusted basis of $25 as U.S. assets (*i.e.*, 25 percent of its effectively connected earnings and profits for 1987), the maximum amount permitted. A also reinvests $75 in 1987 in other U.S. assets. As a result of the reinvestment and election, A has no dividend equivalent amount for 1987.

(ii) For 1988, A has $100 of effectively connected earnings and profits and $100 of non-previously taxed accumulated effectively connected earnings and profits attributable to its preceding taxable year. A elects to treat as U.S. assets marketable securities with an adjusted basis of $50 (*i.e.*, 25 percent of $200), the maximum amount permitted. A's U.S. net equity decreases by $20 during 1988 after taking into account the marketable securities which A elects to treat as U.S. assets. A's dividend equivalent amount for 1988 is $120 ($100 effectively connected earnings and profits increased by the $20 decrease in U.S. assets). The dividend equivalent amount in the current year does not affect the calculation of the amount of marketable securities that A may elect to treat as U.S. assets under paragraph (d)(11) of this section.

(iii) For 1989, A has $56 of effectively connected earnings and profits. Its non-previously taxed accumulated effectively connected earnings and profits attributable to the two preceding taxable years are $80 (*i.e.*, $200 of effectively connected earnings and profits for the two preceding taxable years, reduced by the dividend equivalent amount of $120 for its 1988 taxable year). Thus, the maximum amount of marketable securities that A may elect under paragraph (d)(12) of this section to treat as U.S. assets for 1989 is $34 (*i.e.*, 25 percent of the sum of $56 and $80).

Example (3). Foreign corporation A owns a condominium apartment in the United States. Assume that holding the apartment does not constitute a U.S. trade or business. The condominium apartment constitutes a U.S. asset of A by reason of paragraph (d)(5) of this section. Thus, the disposition by A of the condominium apartment at a gain may give rise to a branch profits tax liability unless the gain is exempt from the branch profits tax under paragraph (h)(1) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty) or § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation).

(e) *U.S. liabilities*—(1) *General rule.* The term "U.S. liabilities" means the product of (i) the U.S. assets of a foreign corporation as of the close of the taxable year and either (ii) the ratio of the foreign corporation's worldwide liabilities as of the close of the taxable year to its worldwide assets as of the close of the taxable year or, (iii) if the foreign corporation computes its interest deduction using a fixed ratio of liabilities to assets (as determined under § 1.882–5(b)(2)(i)), such fixed ratio. The asset valuation method used for purposes of this paragraph (e) must be the same asset valuation method used for determining the amount of the foreign corporation's interest deduction that is apportioned to effectively connected income under § 1.882–5.

(2) *Liabilities of a partnership.* If a foreign corporation is a partner in a partnership, the worldwide liabilities of the foreign corporation shall include, for purposes of this section, the foreign corporation's share of the liabilities of the partnership (as determined under paragraph (d)(9)(iii) of this section).

(3) *Artificial decrease in U.S. liabilities.* If a foreign corporation repays or otherwise decreases its U.S. liabilities and one of the principal purposes of such decrease is to decrease artificially its U.S. liabilities on the determination date, then such decrease shall not be taken into account for purposes of computing the foreign corporation's U.S. net equity. Whether the U.S. liabilities of a foreign corporation are artificially decreased will depend on all the facts and circumstances of each case. Factors to be considered in determining whether one of the principal purposes for the repayment or decrease of the liabilities is to decrease artificially the U.S. liabilities of a foreign corporation shall include whether the aggregate liabilities are temporarily decreased as of the close of the taxable year by, for example, the repayment of liabilities or the acquisition with contributed funds of passive-type assets that are not U.S. assets. For purposes of this paragraph (e)(3), to be one of the principal purposes, a purpose must be important, but it is not necessary that it be the primary purpose.

(f) *Effectively connected earnings and profits*—(1) *In general.* Except as provided in paragraph (f)(2) of this section and as modified by § 1.884–2T (relating to the incorporation or complete termination of a U.S. trade or business or the reorganization or liquidation of a foreign corporation or its domestic subsidiary), the term "effectively connected earnings and profits" means the earnings and profits (or deficits therein) determined under section 312 and this paragraph (f) that are attributable to income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. Effectively connected earnings and profits shall not be reduced by distributions made by the foreign corporation during any taxable year or by the amount of branch profits tax or tax on excess interest (as defined in § 1.884–4T(a)(2)) paid by the foreign corporation. Earnings and profits are attributable to income that is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States regardless of whether the earnings and profits are taken into account under section 312 in an earlier or later taxable year than the taxable year in which the income is taken into account.

(2) *Income that does not produce effectively connected earnings and profits.* The term "effectively connected earnings and profits" shall not include any earnings and profits attributable to—

(i) Income excluded from gross income under section 883(a)(1) or 883(a)(2) (relating to certain income derived from the operation of ships or aircraft),

(ii) Income treated as effectively connected with the conduct of a trade or business in the United States under section 921(d) or 926(b) (relating to certain income of a FSC and certain dividends paid by a FSC to a foreign corporation or nonresident alien) that is not otherwise effectively connected with the conduct of a trade or business in the United States,

(iii) Gain on the disposition of a U.S. real property interest described in section 897(c)(1)(A)(ii) (relating to certain interests in a domestic corporation) that is not otherwise effectively connected with the conduct of a trade or business in the United States,

(iv) Income treated as effectively connected with the conduct of a trade or business in the United States under section 953(c)(3)(C) (relating to certain income of a captive insurance company that a corporation elects to treat as effectively connected with the conduct of a trade or business in the United States) that is not otherwise effectively

connected with the conduct of a trade or business in the United States, and

(v) Income that is exempt from tax under section 892 and the regulations thereunder.

(3) *Allocation of deductions attributable to income that does not produce effectively connected earnings and profits.* In determining the amount of a foreign corporation's effectively connected earnings and profits for the taxable year, deductions and other adjustments shall be allocated and apportioned under the principles of § 1.861–8 between income that is effectively connected with the conduct of a trade or business in the United States and that gives rise to effectively connected earnings and profits and income described in paragraph (f)(2) of this section (relating to income that is effectively connected with the conduct of a trade or business in the United States but does not give rise to effectively connected earnings and profits).

(4) *Examples.* The principles of paragraph (f)(2) of this section are illustrated by the following examples.

Example (1). Foreign corporation A owns a tax-exempt municipal bond that is a U.S. asset as of the close of its 1989 taxable year. The municipal bond gives rise in 1989 to income that is effectively connected with the conduct of a trade or business in the United States (even though the income is excluded from gross income under section 103(a) and is not gross income of a foreign corporation by reason of section 882(b)), and therefore gives rise to effectively connected earnings and profits in 1989.

Example (2). Foreign corporation A derives income that is effectively connected with the conduct of a trade or business in the United States but is not included in A's gross income, and is exempt from tax, under section 894(a) because, under an income tax treaty, it constitutes business profits that are not attributable to a permanent establishment maintained by A in the United States. However, the income gives rise to effectively connected earnings and profits. Such earnings and profits may be exempt from the branch profits tax by reason of paragraph (h) of this section (relating to the application of the branch profits tax to corporations that are residents of countries with which the United States has an income tax treaty).

(g) *Special rules for foreign insurance companies.* A foreign corporation described in section 842(a) (relating to foreign companies carrying on insurance business in the United States) that, for the taxable year, includes in taxable income net investment income as computed under section 842(b), shall—

(1) Treat as effectively connected earnings and profits for the taxable year the amount of minimum effectively connected investment income determined under section 842(b), as adjusted under section 312 to arrive at earnings and profits; and

(2) Determine its U.S. assets solely under this paragraph (g).

A foreign corporation described in this paragraph (g) shall have U.S. assets for the taxable year in which it includes in taxable income net investment income as computed under section 842(b) in an amount equal to the same proportion of the foreign corporation's worldwide assets as of the close of the taxable year that the sum of its effectively connected earnings and profits for the taxable year and non-previously taxed accumulated effectively connected earnings and profits bear to its worldwide current and accumulated earnings and profits for the taxable year.

(h) *Corporations resident in countries with which the United States has an income tax treaty*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, a corporation that is a resident of a country with which the United States has an income tax treaty in effect for a taxable year in which it has a dividend equivalent amount and that meets the requirements, if any, of the limitation on benefits provisions of such treaty with respect to the dividend equivalent amount shall not be subject to the branch profits tax on such amount (or will qualify for a reduction in the amount of tax with respect to such amount) only if—

(i) The foreign corporation is a qualified resident of such country for the taxable year, within the meaning of § 1.884–5T(a) or

(ii) The limitation on benefits provisions entered into force after December 31, 1986.

(2) *Special rules for foreign corporations that are qualified residents on the basis of their ownership*—(i) *General rule.* A foreign corporation that, in any taxable year, is a qualified resident of a country with which the United States has an income tax treaty in effect solely by reason of meeting the requirements of § 1.884–5T (b) and (c) (relating, respectively, to stock ownership and base erosion) shall be exempt from the branch profits tax or subject to a reduced rate of branch profits tax under paragraph (h)(1) of this section with respect to the portion of its dividend equivalent amount for the taxable year attributable to non-previously taxed accumulated effectively connected earnings and profits if the foreign corporation is a qualified resident of such country within the meaning of § 1.884–5T(a) for the taxable years includable, in whole or in part, in a 36-month period that includes the taxable year of the dividend equivalent amount. A foreign corporation that fails the 36-month test described in the preceding sentence shall be exempt from the branch profits tax or subject to the branch profits tax at a reduced rate under paragraph (h)(1) of this section with respect to non-previously taxed accumulated effectively connected earnings and profits (determined on a last-in-first-out basis) accumulated only during prior years in which the foreign corporation was a qualified resident of such country within the meaning of § 1.884–5T(a).

(ii) *Rules of application.* A foreign corporation that has not satisfied the 36-month test as of the close of the taxable year of the dividend equivalent amount but satisfies the test with respect to such dividend equivalent amount by meeting the 36-month test by the close of the second taxable year succeeding the taxable year of the dividend equivalent amount shall be subject to the branch profits tax for the year of the dividend equivalent amount without regard to paragraph (h)(1) of this section on the portion of the dividend equivalent amount attributable to non-previously taxed accumulated effectively connected earnings and profits derived in a taxable year in which the foreign corporation was not a qualified resident within the meaning of § 1.884–5T(a). Upon meeting the 36-month test, the foreign corporation shall be entitled to claim by amended return a refund for the tax paid with respect to the dividend equivalent amount in excess of the branch profits tax calculated by taking into account paragraph (h)(2)(i) of this section, provided the foreign corporation establishes in the amended return for the taxable year that it has met the requirements of such paragraph. For purposes of section 6611 (dealing with interest on overpayments), any overpayment of branch profits tax by reason of this paragraph (h)(2)(ii) shall be deemed not to have been made before the filing date for the taxable year in which the foreign corporation establishes that it has met the 36-month test.

(3) *Exemptions for foreign corporations resident in certain countries with income tax treaties in effect on January 1, 1987.* The branch profits tax shall not be imposed on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraph (h) (1) and (2) of this section for a country listed below, so long as the income tax treaty between the United States and that country, as in effect on January 1, 1987, remains in effect, except

to the extent the treaty is modified on or after January 1, 1987, to expressly provide for the imposition of the branch profits tax:

Aruba	Jamaica
Austria	Japan
Belgium	Korea
People's Republic of China	Luxembourg
Cyprus	Malta
Denmark	Morocco
Egypt	Netherlands
Finland	Netherlands Antilles
Germany	Norway
Greece	Pakistan
Hungary	Philippines
Iceland	Sweden
Ireland	Switzerland
Italy	United Kingdom

(4) *Modifications with respect to other income tax treaties*—(i) *Limitation on rate of tax*—(A) *General rule.* If, under paragraphs (h) (1) and (2) of this section, a corporation qualifies for a reduction in the amount of the branch profits tax and paragraph (h)(3) of this section does not apply, the rate of tax shall be the rate of tax on branch profits specified in the treaty between the United States and the corporation's country of residence or, if no rate of tax on branch profits is specified, the rate of tax that would apply under such treaty to dividends paid to the foreign corporation by a wholly-owned domestic corporation.

(B) *Certain treaties in effect on January 1, 1987.* The branch profits tax shall be imposed at the following rates on the portion of the dividend equivalent amount with respect to which a foreign corporation satisfies the requirements of paragraphs (h) (1) and (2) of this section for a country listed below, for as long as the relevant provisions of those income tax treaties remain in effect and are not modified or superseded by subsequent agreement:

Australia (15%)
Barbados (5%)
Canada (10%)
France [reserved]
New Zealand (5%)
Poland (5%)
Romania (10%)
South Africa (30%)
Trinidad & Tobago (10%)
U.S.S.R. (30%)

(ii) *Limitations other than rate of tax.* If, under paragraphs (h) (1) and (2) of this section, a foreign corporation qualifies for a reduction in the amount of branch profits tax and paragraph (h)(3) of this section does not apply, then—

(A) The foreign corporation shall be entitled to the benefit of any limitations on imposition of a tax on branch profits (in addition to any limitations on the rate of tax) contained in the treaty, and

(B) No branch profits tax shall be imposed with respect to effectively connected earnings and profits of the foreign corporation unless attributable to a permanent establishment in the United States or, if not otherwise prohibited under the treaty, to gain from the disposition of a U.S. real property interest described in section 897(c)(1)(A)(i), except to the extent the treaty specifically permits the imposition of the branch profits tax on such earnings and profits.

No article in such treaty shall be construed to provide any limitations on imposition of the branch profits tax other than as provided in this paragraph (h)(4).

(iii) *Limitations under the Canadian treaty*—(A) *Effect of deficits in earnings and profits.* In the case of a foreign corporation that is a qualified resident of Canada, the dividend equivalent amount for any taxable year shall not exceed the foreign corporation's non-previously taxed accumulated effectively connected earnings and profits as of the close of the current taxable year. Thus, for example, if a foreign corporation that is a qualified resident of Canada has a deficit in non-previously taxed accumulated effectively connected earnings and profits of $200 as of the close of the preceding taxable year and effectively connected earnings and profits of $100 for the current taxable year, it will have no dividend equivalent amount for the taxable year because, as of the close of its current taxable year, it has a $100 deficit in non-previously taxed accumulated effectively connected earnings and profits. For purposes of this paragraph (h)(4)(iii)(A), any net deficit in accumulated earnings and profits attributable to taxable years beginning before January 1, 1987, shall be includible in determining non-previously taxed accumulated effectively connected earnings and profits.

(B) *One-time exemption of Canadian $500,000*—(*1*) *General rule.* In the case of a foreign corporation that is a qualified resident of Canada, the branch profits tax shall be imposed only with respect to that portion of the dividend equivalent amount for the taxable year that, when translated into Canadian dollars and added to the dividend equivalent amounts for preceding taxable years translated into Canadian dollars, exceeds Canadian $500,000. The value of the dividend equivalent amount in Canadian currency shall be determined by translating the effectively connected earnings and profits for each taxable year that are includible in the dividend equivalent amount (as determined in U.S. dollars under the currency translation method used in determining the foreign corporation's taxable income for U.S. tax purposes) by the weighted average exchange rate for the taxable year (determined under the rules of section 989(b)(3)) during which the earnings and profits were derived.

(*2*) *Reduction in amount of exemption in the case of related corporations.* The amount of a foreign corporation's exemption under this paragraph (h)(4)(iii)(B) shall be reduced by the amount of any exemption that reduced the dividend equivalent amount of an associated foreign corporation with respect to the same or a similar business. For purposes of this paragraph (h)(4)(iii)(B), a foreign corporation is an associated foreign corporation if it is related to the foreign corporation for purposes of section 267(b) or it and the foreign corporation are stapled entities (within the meaning of section 269B(c)(2)) or are effectively stapled entities. A business is the same as or similar to another business if it involves the sale, lease, or manufacture of the same or a similar type of property or the provision of the same or a similar type of services. A U.S. real property interest described in section 897(c)(1)(A)(i) shall be treated as a business and all such U.S. real property interests shall be treated as businesses that are the same or similar.

(*3*) *Coordination with second-tier withholding tax.* The value of the dividend equivalent amount that is exempt from the branch profits tax by reason of paragraph (h)(4)(iii)(B)(*1*) of this section shall not be subject to tax under section 871(a) or 881, or to withholding under section 1441 or 1442, when distributed by the foreign corporation.

(5) *Benefits under treaties other than income tax treaties.* [Reserved]

(6) *Example.* The application of this paragraph (h) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is a resident of the United Kingdom. A has a dividend equivalent amount for its taxable year 1991 of $300, of which $100 is attributable to 1991 effectively connected earnings and profits and $200 to non-previously taxed accumulated effectively connected earnings and profits. A is a qualified resident for its taxable year 1991 because for that year it meets the requirements of § 1.884–5T (b) and (c), relating, respectively, to stock ownership and base erosion. For 1991 A does not meet the requirements of § 1.884–5T (d), (e), or (f) for qualified residence. A is not a qualified resident of the United Kingdom for its taxable year 1989 but is a qualified resident for its taxable years 1990 and 1992.

Because A is a qualified resident for the 3-year period (1990, 1991, and 1992) that includes the taxable year of the dividend equivalent amount (1991), A satisfies the 36-month test of paragraph (h)(2) of this section and no branch profits tax is imposed on the total $300 dividend equivalent amount. However, since A was not a qualified resident in 1989 and therefore cannot establish that it has satisifed the 36-month test until the taxable year following the year of the dividend equivalent amount, A must pay the branch profits tax for its taxable year 1991 with respect to the portion of the dividend equivalent amount attributable to non-previously taxed accumulated effectively connected earnings and profits relating to years prior to 1990 without regard to paragraph (h)(1) of this section. A may file for a refund of the branch profits tax paid with respect to its 1991 taxable year at any time after it establishes that it is a qualified resident for its 1992 taxable year.

(i) *Stapled entities.* Any foreign corporation that is treated as a domestic corporation by reason of section 269B (relating to stapled entities) shall continue to be treated as a foreign corporation for all purposes of section 884 and the regulations thereunder, notwithstanding section 269B or the regulations thereunder.

(j) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

§ 1.884-2T Special rules for termination or incorporation of a U.S. trade or business or liquidation or reorganization of a foreign corporation or its domestic subsidiary. (temporary)

(a) *Complete termination of a U.S. trade or business*—(1) *General rule.* A foreign corporation shall not be subject to the branch profits tax for the taxable year in which it completely terminates all of its U.S. trade or business within the meaning of paragraph (a)(2) of this section. A foreign corporation's non-previously taxed accumulated effectively connected earnings and profits as of the close of the taxable year of complete termination shall be extinguished for purposes of section 884 and the regulations thereunder, but not for other purposes (for example, sections 312, 316 and 381).

(2) *Operating rules*—(i) *Definition of complete termination.* A foreign corporation shall have completely terminated all of its U.S. trade or business for any taxable year ("the year of complete termination") only if—

(A) As of the close of that taxable year, the foreign corporation either has no U.S. assets, or its shareholders have adopted an irrevocable resolution in that taxable year to completely liquidate and dissolve the corporation and, before the close of the immediately succeeding taxable year (also a "year of complete termination" for purposes of applying this paragraph (a)(2)), all of its U.S. assets are either distributed, used to pay off liabilities, or cease to be U.S. assets;

(B) Neither the foreign corporation nor a related corporation uses, directly or indirectly, any of the U.S. assets of the terminated U.S. trade or business, or property attributable thereto or to effectively connected earnings and profits earned by the foreign corporation in the year of complete termination, in the conduct of a trade or business in the United States at any time during a period of three years from the close of the year of complete termination;

(C) The foreign corporation has no income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States (other than solely by reason of section 864 (c)(6) or (c)(7)) during the period of three years from the close of the year of complete termination; and

(D) The foreign corporation attaches to its income tax return for each year of complete termination a waiver of the period of limitations, as described in paragraph (a)(2)(ii) of this section.

If a foreign corporation fails to completely terminate all of its U.S. trade or business because of the failure to meet any of the requirements of this paragraph (a)(2), then its branch profits tax liability for the taxable year and all subsequent taxable years shall be determined under the provisions of § 1.884–1T, without regard to any provisions in this paragraph (a), taking into account any reduction in U.S. net equity that results from a U.S. trade or business of the foreign corporation ceasing to have U.S. assets. Any additional branch profits tax liability that may result, together with interest thereon (charged at the underpayment rates determined under section 6621(a)(2) with respect to the period between the date that was prescribed for filing the foreign corporation's income tax return for the taxable year with respect to which the branch profits tax liability arises and the date on which the additional tax for that year is paid), and applicable penalties, if any, shall be the liability of the foreign corporation (or of any person who is a transferee of the foreign corporation within the meaning of section 6901).

(ii) *Waiver of period of limitations.* The waiver referred to in paragraph (a)(2)(i)(D) of this section shall be executed on such forms as are prescribed by the Commissioner and shall extend the period for assessment of the branch profits tax for the year of complete termination to a date not earlier than the close of the sixth taxable year following that taxable year. Such waiver shall contain such other terms with respect to assessment as may be considered appropriate by the Commissioner to ensure the assessment and collection of the correct tax liability for each year for which the waiver is required. The waiver must be signed by the person authorized to sign the income tax returns for the foreign corporation (including an agent authorized to do so under a general or specific power of attorney). The waiver must be filed on or before the date (including extensions) prescribed for filing the foreign corporation's income tax return for the year of complete termination. For taxable years ending on or before December 1, 1988, such waiver may be filed by attaching it to an amended Form 1120F and filing such document on or before January 3, 1988.

(iii) *Property subject to reinvestment prohibition rule.* For purposes of paragraph (a)(2)(i)(B) of this section—

(A) The term "U.S. assets of the terminated U.S. trade or business" shall mean all the money and other property that qualified as U.S. assets of the foreign corporation as of the close of the taxable year immediately preceding the year of complete termination; and

(B) Property attributable to U.S. assets or to effectively connected earnings and profits earned by the foreign corporation in the year of complete termination shall mean money or other property into which any part or all of such assets or effectively connected earnings and profits are converted at any time before the expiration of the three-year period specified in paragraph (a)(2)(i)(B) of this section by way of sale, exchange, or other disposition, as well as any money or other property attributable to the sale by a shareholder of the foreign corporation of its interest in the foreign corporation (or a successor corporation) at any time after a date which is 12 months before the close of the year of complete termination (24 months in the case of a foreign corporation that makes an election under paragraph (b) of this section).

(iv) *Related corporation.* For purposes of paragraph (a)(2)(i)(B) of this section, a corporation shall be related to a foreign corporation if either corporation is a 10-percent shareholder of the other corporation or, where the foreign corporation completely liquidates, if either corporation would have been a 10-percent shareholder of the other corporation had the foreign corporation remained in existence. For this purpose, the term "10-percent shareholder" means any person described in section 871(h)(3)(B) as well as any person who

owns 10 percent or more of the total value of the stock of the corporation, and stock ownership shall be determined on the basis of the attribution rules described in section 871(h)(3)(C).

(v) *Direct or indirect use of U.S. assets.* The use of any part or all of the property referred to in paragraph (a)(2)(i)(B) of this section shall include the loan thereof to a related corporation or the use thereof as security (as a pledge, mortgage, or otherwise) for any indebtedness of a related corporation.

(3) *Complete termination in the case of a section 338 election.* A foreign corporation whose stock is acquired by another corporation that makes (or is deemed to make) an election under section 338 with respect to the stock of the foreign corporation shall be treated as having completely liquidated as of the close of the acquisition date (as defined in section 338(h)(2)) and to have completely terminated all of its U.S. trade or business with respect to the taxable year ending on such acquisition date provided the foreign corporation that exists prior to the section 338 transaction complies with the requirements of paragraph (a)(2)(i) (B) and (D) of this section. For purposes of the preceding sentence, any of the money or other property paid as consideration for the acquisition of the stock in the foreign corporation (and for any debt claim against the foreign corporation) shall be treated as property attributable to the U.S. assets of the terminated U.S. trade or business and to the effectively connected earnings and profits of the foreign corporation earned in the year of complete termination.

(4) *Complete termination in the case of a foreign corporation with income under section 864(c)(6) or 864(c)(7).* No branch profits tax shall be imposed on effectively connected earnings and profits attributable to income that is treated as effectively connected with the conduct of a trade or business in the United States solely by reason of section 864(c)(6) or 864(c)(7) if—

(i) No income of the foreign corporation for the taxable year is, or is treated as, effectively connected with the conduct of a trade or business in the United States, without regard to section 864(c)(6) or 864(c)(7),

(ii) The foreign corporation has no U.S. assets as of the close of the taxable year, and

(iii) Such effectively connected earnings and profits would not have been subject to branch profits tax pursuant to the complete termination provisions of paragraph (a)(1) of this section if income or gain subject to section 864(c)(6) had not been deferred or if property subject to section 864(c)(7) had been sold immediately prior to the date the property ceased to have been used in the conduct of a trade or business in the United States.

(5) *Coordination with second-level withholding tax.* Effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits of a foreign corporation that are exempt from branch profits tax by reason of the provisions of paragraph (a)(1) of this section shall not be subject to tax under section 871(a), 881(a), 1441 or 1442 when paid as a dividend by such foreign corporation (or a successor-in-interest).

(b) *Election to remain engaged in a U.S. trade or business.* A foreign corporation that would be considered to have completely terminated all of its U.S. trade or business for the taxable year under the provisions of paragraph (a)(2)(i) of this section, but for the provisions of paragraph (a)(2)(i)(B) of this section that prohibit reinvestment within a three-year period, may make an election under this paragraph (b) for the taxable year in which it completely terminates all its U.S. trade or business (as determined without regard to paragraph (a)(2)(i)(B) of this section) and, if it so chooses, for the following taxable year (but not for any succeeding taxable year). The election under this paragraph (b) is an election by the foreign corporation to designate an amount of marketable securities (as defined in § 1.884–1T(d)(8)) as U.S. assets for purposes of § 1.884–1T. In order to qualify for this election—

(1) The marketable securities must be identified within 30 days of the date an equivalent amount of U.S. assets ceases to be U.S. assets; and

(2) On the date a marketable security is identified, its adjusted basis must not exceed its fair market value.

The marketable securities identified pursuant to the election under this paragraph (b) shall be treated as being U.S. assets in an amount equal, in the aggregate, to the lesser of the adjusted basis of the U.S. assets that ceased to be U.S. assets during the taxable year in which the election is made (determined on the date or dates the U.S. assets ceased to be U.S. assets) or the adjusted basis of the marketable securities as of the end of the taxable year. The securities must be held from the date they are identified until the end of the taxable year for which the election is made, or, if disposed of during that taxable year, must be replaced on the date of disposition with other marketable securities that are acquired on or before that date and the fair market value of which as of the date of substitution is not less than their adjusted basis. Except as otherwise provided in this paragraph (b), the election under this paragraph (b) shall be made in accordance with the provisions of § 1.884–1T(d)(11), subject to the same conditions as are set forth in that section, and shall have the same consequences as provided in § 1.884–1T(d)(11)(ii) (including the marking to market of such securities at the close of each taxable year for which the election is effective) except that such consequences start with the first day of the taxable year for which the election is effective and continue until the earlier of the date of substitution by the foreign corporation of a U.S. asset for such marketable security or the close of the taxable year for which the election is effective. The securities shall be marked to market immediately prior to the date of substitution. An election under § 1.884–1T(d)(11) shall not be effective for any taxable year for which the election under this paragraph (b) is effective. A foreign corporation shall not be permitted to make an election under this paragraph (b) more than once. See § 1.884–1T(d)(11) for other rules regarding the effect and manner of making this election, including transition rules.

(c) *Liquidation, reorganization, etc. of a foreign corporation.* The following rules apply to the transfer by a foreign corporation engaged (or deemed engaged) in the conduct of a U.S. trade or business (the "transferor") of its U.S. assets to another corporation (the "transferee") in a complete liquidation or reorganization described in section 381(a) (a "section 381(a) transaction") if the transferor is engaged (or deemed engaged) in the conduct of a U.S. trade or business immediately prior to the section 381(a) transaction. For purposes of this paragraph (c), a section 381(a) transaction is considered to occur in the taxable year that ends on the date of distribution or transfer (as defined in § 1.381(b)–1(b)) pursuant to the section 381(a) transaction.

(1) *Inapplicability of paragraph (a)(1) of this section to section 381(a) transactions.* Paragraph (a)(1) of this section (relating to the complete termination of a U.S. trade or business of a foreign corporation) does not apply to exempt the transferor from branch profits tax liability for the taxable year in which the section 381(a) transaction occurs or in any succeeding taxable year.

(2) *Transferor's dividend equivalent amount for the taxable year in which a section 381(a) transaction occurs.* The

dividend equivalent amount for the taxable year, including a short taxable year, in which a section 381(a) transaction occurs shall be determined under the provisions of § 1.884–1T, as modified under the provisions of this paragraph (c)(2).

(i) *U.S. net equity.* The transferor's U.S. net equity as of the close of the taxable year shall be determined without regard to any transfer in that taxable year of U.S. assets to or from the transferee pursuant to a section 381(a) transaction, and without regard to any U.S. liabilities assumed or acquired by the transferee from the transferor in that taxable year pursuant to a section 381(a) transaction. The transferor's adjusted basis (for earnings and profits purposes) in U.S. assets transferred to the transferee pursuant to a section 381(a) transaction shall be the adjusted basis of those assets (for earnings and profits purposes) immediately prior to the section 381(a) transaction, adjusted as provided under section 362(b), treating the transferor, for that purpose, as though it were the transferee and treating the gain taken into account for earnings and profits purposes as gain recognized.

(ii) *Effectively connected earnings and profits.* The transferor's effectively connected earnings and profits for the taxable year in which the section 381(a) transaction occurs and its non-previously taxed accumulated effectively connected earnings and profits shall be determined without regard to the carryover to the transferee of the transferor's earnings and profits under section 381 (a) and (c)(2) and paragraph (c)(4) of this section. Effectively connected earnings and profits for the taxable year in which a section 381(a) transaction occurs shall be adjusted by the amount of any gain recognized to the transferor in that year pursuant to the section 381(a) transaction (to the extent taken into account for earnings and profits purposes).

(iii) *Waiver of period of limitations and transferee agreement.* In the case of a transferee that is a domestic corporation, the provisions of paragraph (c)(2)(i) of this section shall not apply unless, as part of the section 381(a) transaction, the transferee executes a Form 2045 (Transferee Agreement) and a waiver of period of limitations as described in this paragraph (c)(2)(iii), and files both documents with its timely filed (including extensions) income tax return for the taxable year in which the section 381(a) transaction occurs. The waiver shall be executed on such forms as are prescribed by the Commissioner and shall extend the period for assessment of any additional branch profits tax for the taxable year in which the section 381(a) transaction occurs to a date not earlier than the close of the sixth taxable year following the taxable year in which such transaction occurs. The waiver shall contain such other terms with respect to assessment as may be considered appropriate by the Commissioner to ensure the assessment and collection of the correct tax liability for such year. The waiver must be signed by the person authorized to sign Form 2045. For taxable years ending on or before December 1, 1988, Form 2045 and the waiver may be filed by attaching both documents to an amended Form 1120F on or before January 3, 1989.

(3) *Transferor's dividend equivalent amount for any taxable year succeeding the taxable year in which the section 381(a) transaction occurs.* Any decrease in U.S. net equity in any taxable year succeeding the taxable year in which the section 381(a) transaction occurs shall increase the transferor's dividend equivalent amount for those years without regard to the limitation in § 1.884–1T(b)(3)(ii), to the extent such decrease in U.S. net equity does not exceed the balance of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits carried over to the transferee pursuant to section 381 (a) and (c)(2), as determined under paragraph (c)(4) of this section.

(4) *Earnings and profits of the transferor carried over to the transferee pursuant to the section 381(a) transaction*—(i) *Amount.* The amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits of the transferor that carry over to the transferee under section 381 (a) and (c)(2) shall be the effectively connected earnings and profits and the non-previously taxed accumulated effectively connected earnings and profits of the transferor immediately before the close of the taxable year in which the section 381(a) transaction occurs. For this purpose, the provisions in § 1.381(c)(2)–1 shall generally apply with proper adjustments to reflect the fact that effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits are not affected by distributions to shareholders but, rather, by dividend equivalent amounts. Therefore, the amounts of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that carry over to the transferee pursuant to those provisions are reduced by the transferor's dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs. Such amounts are also reduced to the extent of any dividend equivalent amount determined for any succeeding taxable year solely as a result of the provisions of paragraph (c)(3) of this section. For purposes of this paragraph (c)(4)(i), if the transferor accumulates non-previously taxed effectively connected earnings and profits, or incurs a deficit in effectively connected earnings and profits, attributable to a period that is after the close of the taxable year in which the section 381(a) transaction occurs and before the liquidation of the transferor, then such effectively connected earnings and profits, or deficits therein, shall be deemed to have been accumulated or incurred on or before the close of the taxable year in which the section 381(a) transaction occurs.

(ii) *Retention of character.* All of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that carry over to the transferee shall constitute non-previously taxed accumulated effectively connected earnings and profits of the transferee. In the case of a domestic transferee, such non-previously taxed accumulated effectively connected earnings and profits shall also constitute accumulated earnings and profits of the transferee for purposes of section 316(a)(2).

(iii) *Treatment of distributions by a domestic transferee out of non-previously taxed accumulated effectively connected earnings and profits.* In the event the transferee is a domestic corporation, distributions out of the transferee's non-previously taxed accumulated effectively connected earnings and profits that are received by a foreign distributee shall qualify for benefits under an applicable income tax treaty only (A) if the distributee qualifies for the benefits under such treaty and (B) to the extent that the transferor foreign corporation would have qualified under the principles of § 1.884–1T(h) (1) and (2)(i) for an exemption or reduction in rate with respect to the branch profits tax if the non-previously taxed accumulated effectively connected earnings and profits had been reflected in a dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs. (The tax rate on dividends

specified in the treaty between the distributee's country of residence and the United States shall apply to any dividends received by a distributee who qualifies for a treaty benefit under the preceding sentence.) In addition, distributions out of such non-previously taxed accumulated effectively connected earnings and profits shall retain their character in the hands of any domestic distributee up a chain of corporate shareholders for purposes of applying this paragraph (c)(4)(iii) to distributions made by any such person to a foreign distributee. If a domestic transferee has non-previously taxed accumulated effectively connected earnings and profits carried over from the transferor as well as accumulated earnings and profits, then each category of earnings and profits shall be accounted for in two separate pools, and any distribution of earnings and profits shall be treated as a distribution out of each pool in proportion to the respective amount of undistributed earnings and profits in each pool. Section 871(i) (relating, in part, to dividends paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1)) shall not apply to any dividends paid by a domestic transferee out of its non-previously taxed accumulated effectively connected earnings and profits.

(5) *Determination of U.S. net equity of a transferee that is a foreign corporation.* In the event the transferee is a foreign corporation, then for purposes of determining the transferee's increase or decrease in U.S. net equity under § 1.884–1T for its taxable year during which the section 381(a) transaction occurs, its U.S. net equity as of the close of its immediately preceding taxable year shall be increased by the amount of U.S. net equity acquired by the transferee from the transferor pursuant to the section 381(a) transaction, taking into account the adjustments to the basis (for earnings and profits purposes) of U.S. assets under the principles of section 362(b).

(6) *Special rules in the case of the disposition of stock or securities in a domestic transferee or in the transferor*—(i) *General rule.* This paragraph (c)(6)(i) shall apply where the transferee is a domestic corporation, subdivision (A), (B), or (C) of this paragraph applies and subdivision (D) of this paragraph applies.

(A) Shareholders of the transferor sell, exchange or otherwise dispose of stock in the transferor at any time during a 12-month period before the date of distribution or transfer (as defined in § 1.381(b)–1(b)) and the aggregate amount of such stock sold, exchanged or otherwise disposed of exceeds 25 percent of the value of the stock of the transferor, determined on a date that is 12 months before the date of distribution or transfer.

(B) Shareholders of the transferee (or of the transferee's parent in the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C)) who in the aggregate owned more than 25 percent of the value of the stock of the transferor at any time within the 12 month period preceding the close of the year in which the section 381(a) transaction occurs sell, exchange or otherwise dispose of their stock or securities in the transferee at any time during a period of three years from the close of the taxable year in which the section 381(a) transaction occurs.

(C) In the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C), the transferee's parent sells, exchanges or otherwise disposes of its stock or securities in the transferee at any time during a period of three years from the close of the taxable year in which the section 381(a) transaction occurs.

(D) A corporation related to any such shareholder or the shareholder itself if it is a corporation (subsequent to an event described in subdivision (A) or (B) of this paragraph (c)(6)(i)), or the transferee's parent (subsequent to an event described in subdivision (C) of this paragraph (c)(6)(i)), uses, directly or indirectly, the proceeds or property received in such sale, exchange or disposition, or property attributable thereto, in the conduct of a trade or business in the United States at any time during a period of three years from the date of sale in the case of a disposition of stock in the transferor, or from the close of the taxable year in which the section 381(a) transaction occurs in the case of a disposition of the stock or securities in the transferee (or the transferee's parent in the case of a reorganization described in the parenthetical clause in section 368(a)(1)(C)).

Where this paragraph (c)(6)(i) applies, the transferor's branch profits tax liability for the taxable year in which the section 381(a) transaction occurs shall be determined under § 1.884–1T, taking into account all the adjustments in U.S. net equity that result from the transfer of U.S. assets and liabilities to the transferee pursuant to the section 381(a) transaction, without regard to any provisions in this paragraph (c). If an event described in paragraph (c)(6)(i) (A), (B), or (C) of this section occurs after the close of the taxable year in which the section 381(a) transaction occurs, and if additional branch profits tax is required to be paid by reason of the application of this paragraph (c)(6)(i), then interest must be paid on that amount at the underpayment rates determined under section 6621(a)(2), with respect to the period between the date that was prescribed for filing the transferor's income tax return for the year in which the section 381(a) transaction occurs and the date on which the additional tax for that year is paid. Any such additional tax liability together with interest thereon shall be the liability of the transferee within the meaning of section 6901 pursuant to section 6901 and the regulations thereunder.

(ii) *Operating rule.* For purposes of paragraph (c)(6)(i) of this section paragraphs (a)(2) (iii)(B), (iv) and (v) of this section shall apply for purposes of making the determinations under paragraph (c)(6)(i)(D) of this section.

(d) *Incorporation under section 351*—(1) *In general.* The following rules apply to the transfer by a foreign corporation engaged (or deemed engaged) in the conduct of a U.S. trade or business (the "transferor") of part or all of its U.S. assets to a U.S. corporation (the "transferee") in exchange for stock or securities in the transferee in a transaction that qualifies under section 351(a) (a "section 351 transaction"), provided that immediately after the transaction, the transferor is in control (as defined in section 368(c)) of the transferee, without regard to other transferors.

(2) *Inapplicability of paragraph (a)(1) of this section to section 351 transactions.* Paragraph (a)(1) of this section does not apply to exempt the transferor from branch profits tax liability for the taxable year in which a section 351 transaction described in paragraph (d)(1) of this section occurs and shall not apply for any subsequent taxable year of the transferor in which it, or a successor-in-interest, owns stock or securities of a transferee as of the close of the transferor's taxable year.

(3) *Transferor's dividend equivalent amount for the taxable year in which a section 351 transaction occurs.* The dividend equivalent amount of the transferor for the taxable year in which a section 351 transaction described in paragraph (d)(1) of this section occurs shall be determined under the provisions of § 1.884–1T, as modified by the provisions of this paragraph (d)(3) provided that the transferee elects under paragraph (d)(4) of this section to be allocated a proportionate amount of the

transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits and the foreign corporation files a statement as provided in paragraph (d)(5)(i) of this section and complies with the agreement included in such statement with respect to a subsequent disposition of the transferee's stock.

(i) *U.S. net equity.* The transferor's U.S. net equity as of the close of the taxable year shall be determined without regard to any transfer in that taxable year of U.S. assets to or from the transferee pursuant to a section 351 transaction, and without regard to any U.S. liabilities assumed or acquired by the transferee from the transferor in that taxable year pursuant to a section 351 transaction. The transferor's adjusted basis for earnings and profits purposes in U.S. assets transferred to the transferee pursuant to a section 351 transaction shall be the adjusted basis of those assets for earnings and profits purposes immediately prior to the section 351 transaction, increased by the amount of any gain recognized by the transferor on the transfer of such assets in the section 351 transaction to the extent taken into account for earnings and profits purposes.

(ii) *Effectively connected earnings and profits.* Subject to the limitation in paragraph (d)(3)(iii) of this section, the calculation of the transferor's dividend equivalent amount shall take into account the transferor's effectively connected earnings and profits for the taxable year in which a section 351 transaction occurs (including any amount of gain recognized to the transferor pursuant to the section 351 transaction to the extent the gain is taken into account for earnings and profits purposes) and, for purposes of applying the limitation of § 1.884–1T(b)(3)(ii), its non-previously taxed accumulated effectively connected earnings and profits, determined without regard to the allocation to the transferee of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section.

(iii) *Limitation on dividend equivalent amount.* The dividend equivalent amount determined under this paragraph (d)(3) shall not exceed the sum of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits determined after taking into account the allocation to the transferee of the transferor's earnings pursuant to an election under paragraph (d)(4)(i) of this section.

(4) *Election to increase earnings and profits*—(i) *General rule.* The election referred to in paragraph (d)(3) of this section is an election by the transferee to increase its earnings and profits by the amount determined under paragraph (d)(4)(ii) of this section. An election under this paragraph (d)(4)(i) shall be effective only if the transferee attaches a statement to its timely filed (including extensions) income tax return for the taxable year in which the section 351 transaction occurs, in which—

(A) It agrees to be subject to the rules of paragraph (c)(4) (ii) and (iii) of this section with respect to the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee pursuant to the election under this paragraph (d)(4)(i) in the same manner as if such earnings and profits had been carried over to the transferee pursuant to section 381 (a) and (c)(2), and

(B) It identifies the amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that are allocated from the transferor.

An election with respect to a taxable year ending on or before December 1, 1988, may be made by filing an amended Form 1120F on or before January 3, 1988, to which the statement described in this paragraph (d)(4)(i) shall be attached.

(ii) *Amount of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee.* The amount referred to in paragraph (d)(4)(i) of this section is equal to the same proportion of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits (determined immediately prior to the section 351 transaction and without regard to this paragraph (d)(4) or any dividend equivalent amount for the taxable year) that the adjusted bases for purposes of computing earnings and profits in all the U.S. assets transferred to the transferee by the transferor pursuant to the section 351 transaction bear to the adjusted bases for purposes of computing earnings and profits in all the U.S. assets of the transferor, determined immediately prior to the section 351 transaction.

(iii) *Effect of election on transferor.* For purposes of computing the transferor's dividend equivalent amount for the taxable year succeeding the taxable year in which a section 351 transaction occurs, the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits as of the close of the taxable year in which the section 351 transaction occurs shall be reduced by the amount of its effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to the transferee pursuant to the election under paragraph (d)(4)(i) of this section (and by its dividend equivalent amount for the taxable year in which the section 351 transaction occurs).

(5) *Dispositions of stock or securities of the transferee by the transferor*—(i) *General rule.* The statement referred to in paragraph (d)(3) of this section is a statement executed by the transferor stating the transferor's agreement that, upon the disposition of part or all of the stock or securities it owns in the transferee (or a successor-in-interest), it shall treat as a dividend equivalent amount for the taxable year in which the disposition occurs an amount equal to the lesser of (A) the amount realized upon such disposition or (B) the total amount of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits that was allocated from the transferor to that transferee pursuant to an election under paragraph (d)(4)(i) of this section, which amount shall be reduced to the extent previously taken into account by the transferor as dividends or dividend equivalent amounts for tax or branch profits, tax purposes. The extent and manner in which such dividend equivalent amount may be subject to the branch profits tax in the taxable year of disposition shall be determined under the provisions of section 884 and the regulations thereunder, including the provisions of paragraph (a) of this section (relating to complete terminations), as limited under paragraph (d)(2) of this section. Except as otherwise provided in paragraph (d)(5)(ii) of this section, the term "disposition" means any transfer that would constitute a disposition by the transferor for any purpose of the Internal Revenue Code and the regulations thereunder. This paragraph (d)(5)(i) shall apply regardless of whether the stock or securities of the transferee are U.S. assets in the hands

of the transferor at the time of sale, exchange or disposition.

(ii) *Exception for certain tax-free dispositions.* For purposes of paragraph (d)(5)(i) of this section, a disposition does not include a transfer of stock or securities of the transferee by the transferor in a transaction that qualifies as a transfer pursuant to a complete liquidation described in section 332(b) or a transfer pursuant to a reorganization described in section 368(a)(1)(F). Any other transfer that qualifies for non-recognition of gain or loss shall be treated as a disposition for purposes of paragraph (d)(5)(i) of this section, unless the Commissioner has, by published guidance or by prior ruling issued to the taxpayer upon its request, determined such transfer not to be a disposition for purposes of paragraph (d)(5)(i) of this section.

(iii) *Distributions governed by section 355.* In the case of a distribution or exchange of stock or securities of a transferee to which section 355 applies (or so much of section 356 as relates to section 355) and that is not in pursuance of a plan meeting the requirements of a reorganization as defined in section 368(a)(1)(D), § 1.312–10(b) (relating to the allocation of earnings and profits in certain corporate separations) shall not apply to reduce the transferor's effectively connected earnings and profits or non-previously taxed accumulated effectively connected earnings and profits.

(iv) *Filing of statement.* The statement referred to in paragraph (d)(5)(i) of this section shall be attached to a timely filed (including extensions) income tax return of the transferor for the taxable year in which the section 351 transaction occurs. An election with respect to a taxable year ending on or before December 1, 1988, may be made by filing an amended Form 1120F on or before January 3, 1988, to which the statement described in this paragraph (d)(5)(iv) shall be attached.

(6) *Example.* The provisions of this paragraph (d) are illustrated by the following example.

Example. Foreign corporation X has a calendar taxable year. X's only assets are U.S. assets and X computes its interest deduction using the actual ratio of liabilities to assets under § 1.882–5(b)(2)(ii). X's U.S. net equity as of the close of its 1988 taxable year is $2,000, resulting from the following amounts of U.S. assets and liabilities:

U.S. assets		U.S. liabilities	
U.S. building A.	$1,000	Mortgage A	800
U.S. building B.	2,500	Mortgage B	1,500

U.S. assets		U.S. liabilities	
Other U.S. assets.	800		
Total	4,300		2,300

Assume that X's adjusted basis in its assets is equal to X's adjusted basis in its assets for earnings and profits purposes. On September 30, 1989, X transfers building A, which has a fair market value of $1,800, to a newly created U.S. corporation Y under section 351 in exchange for 100% of the stock of Y with a fair market value of $800, other property with a fair market value of $200, and the assumption of Mortgage A. Assume that under sections 11 and 351(b), tax of $30 is imposed with respect to the $200 of other property received by X. X's non-previously taxed accumulated effectively connected earnings and profits as of the close of its 1988 taxable year are $200 and its effectively connected earnings and profits for its 1989 taxable year are $330, including $170 of gain recognized to X on the transfer as adjusted for earnings and profits purposes (*i.e.*, $200 of gain recognized minus $30 of tax paid with respect to the gain). Y takes a $1,200 basis in the building transferred from X, equal to the basis in the hands of X ($1,000) increased by the amount of gain recognized to X in the section 351 transaction ($200). Y makes an election in the manner described in paragraph (d)(4)(i) of this section to increase its earnings and profits by the amount described in paragraph (d)(4)(ii) of this section and X files a statement as provided in paragraph (d)(5)(i) of this section. The branch profits tax consequences to X and Y in the taxable year in which the section 351 transaction occurs and in subsequent taxable years are as follows:

(i) *X's dividend equivalent amount for 1989.* The determination of X's dividend equivalent amount for 1989 is a three-step process: determining X's U.S. net equity as of the close of its 1989 taxable year under paragraph (d)(3)(i) of this section; determining the amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits for its 1989 taxable year under paragraph (d)(3)(ii) of this section; and applying the limitation in paragraph (d)(3)(iii) of this section.

Step one: Pursuant to paragraph (d)(3)(i) of this section, X's U.S. net equity as of the close of its 1989 taxable year is calculated without regard to the section 351 transaction except that X's basis in its U.S. assets is increased by the $170 amount of gain it has recognized for earnings and profits purposes in connection with the section 351 transaction. Thus, X's U.S. net equity as of the close of its 1989 taxable year is $1,870, consisting of the following U.S. assets and liabilities, taking into account the fact that X's other U.S. assets have decreased to $500:

U.S. assets		U.S. liabilities	
Building A	$1,170	Mortgage A	800
Building B	2,500	Mortgage B	1,500

U.S. assets		U.S. liabilities	
Other U.S. assets.	500		
Total	4,170		2,300

Thus, X's U.S. net equity as of the close of its 1989 taxable year has decreased by $130 relative to its U.S. net equity as of the close of its 1988 taxable year.

Step two: Pursuant to paragraph (d)(3)(ii) of this section, X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits for the taxable year are determined without taking into account the allocation to Y of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section. Thus, X's effectively connected earnings and profits for its 1989 taxable year are $330 and X's non-previously taxed accumulated effectively connected earnings and profits are $200. Thus, but for the limitation in paragraph (d)(3)(iii) of this section, X's dividend equivalent amount for the taxable year would be $460, equal to X's effectively connected earnings and profits for the taxable year ($330), increased by the decrease in X's U.S. net equity ($130).

Step three: Pursuant to paragraph (d)(3)(iii) of this section, X's dividend equivalent amount for its 1989 taxable year may not exceed the sum of the transferor's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits, determined as of the close of its 1989 taxable year, after taking into account the allocation of the transferor's earnings and profits pursuant to the election under paragraph (d)(4)(i) of this section. Based upon subdivision (ii) of this example, X's dividend equivalent amount for 1989 cannot exceed $423, which is equal to the total amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits, determined as of the close of its 1989 taxable year without regard to the allocation of earnings and profits to Y pursuant to Y's election under paragraph (d)(4)(i) of this section ($530), reduced by the amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y pursuant to Y's election under paragraph (d)(4)(i) of this section ($107). Thus, X's dividend equivalent amount for its 1989 taxable year is limited to $423.

(ii) *Amount of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits transferred to Y.* Pursuant to Y's election under paragraph (d)(4)(i) of this section, Y increases its earnings and profits by the amount prescribed in paragraph (d)(4)(ii) of this section. This amount is equal to the sum of X's effectively connected earnings and profits and non previously taxed accumulated effectively connected earnings and profits

determined immediately before the section 351 transaction, without regard to X's dividend equivalent amount for the year, allocated in the same proportion that X's basis in the U.S. assets transferred to Y bears to the bases of all of X's U.S. assets, which bases are determined immediately prior to the section 351(a) transaction. The amount of X's effectively connected earnings and profits immediately before the section 351 transaction is assumed to be $260. The total amount of effectively connected earnings and profits ($260) and non-previously taxed accumulated effectively connected earnings and profits ($200) determined immediately before the section 351 transaction is, therefore, $460. The portion of $460 that is allocated to Y pursuant to Y's election under paragraph (d)(4)(i) of this section is $107, calculated as $467 multiplied by a fraction, the numerator of which is the basis of the U.S. assets transferred to Y pursuant to the section 351 transaction ($1,000), and the denominator of which is the basis of X's U.S. assets determined immediately before the section 351 transaction ($4,300). Pursuant to paragraph (d)(4)(i) of this section, the amount of $107 of X's effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y pursuant to paragraph (d)(4)(i) of this section constitutes non-previously taxed accumulated effectively connected earnings and profits of Y.

(iii) *X's non-previously taxed accumulated effectively connected earnings and profits for 1990.* Pursuant to paragraph (d)(4)(iii) of this section, X's non-previously taxed accumulated effectively connected earnings and profits as of the close of its 1989 taxable year for purposes of computing its dividend equivalent amount for its taxable year 1990 are zero, *i.e.*, $530 of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits reduced by $107 of effectively connected earnings and profits and non-previously taxed accumulated effectively connected earnings and profits allocated to Y, and further reduced by X's $423 dividend equivalent amount for its 1989 taxable year.

(iv) *X's U.S. net equity for purposes of determining the dividend equivalent amount for succeeding taxable years.* For 1990, X must determine its U.S. net equity as of December 31, 1989, in order to determine whether there has been an increase or decrease in its U.S. net equity as of December 31, 1990. For this purpose, X's U.S. net equity as of December 31, 1989 is determined under the provisions of § 1.884–1T without regard to the special rules in paragraph (d)(3)(i) of this section. Thus, X.'s U.S. net equity as of December 31, 1989 is $1,500, consisting of the following. U.S. assets and liabilities:

U.S. assets		U.S. liabilities	
Building B	$2,500	Mortgage B	1,500
Other U.S. assets	500		
Total	$3,000		1,500

(e) *Certain transactions with respect to a domestic subsidiary.* In the case of a section 381(a) transaction in which a domestic subsidiary of a foreign corporation transfers assets to that foreign corporation or to another foreign corporation with respect to which the first foreign corporation owns stock (directly or indirectly) meeting the requirements of section 1504(a)(2), the transferee's non-previously taxed accumulated effectively connected earnings and profits for the taxable year in which the section 381(a) transaction occurs shall be increased by all of the domestic subsidiary's current earnings and profits and earnings and profits accumulated after December 31, 1986, that carry over to the transferee under sections 381(a) and (c)(1) (including non-previously taxed accumulated effectively connected earnings and profits, if any, transferred to the domestic subsidiary under paragraphs (c)(4) and (d)(4) of this section and treated as earnings and profits under paragraphs (c)(4)(ii) and (d)(4)(ii) of this section). For purposes of determining the transferee's dividend equivalent amount for the taxable year in which the section 381(a) transaction occurs, the transferee's U.S. net equity as of the close of its taxable year immediately preceding the taxable year during which the section 381(a) transaction occurs shall be increased by the greater of

(1) The amount by which the transferee's U.S. net equity computed immediately prior to the transfer would have increased due to the transfer of the subsidiary's assets and liabilities if U.S. net equity were computed immediately prior to the transfer and immediately after the transfer (taking into account in the earnings and profits basis of the assets transferred any gain recognized on the transfer to the extent reflected in earnings and profits), or

(2) The total amount of U.S net equity transferred (directly or indirectly) by the foreign parent to the domestic subsidiary in one or more prior section 351 or 381(a) transactions.

(f) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

§ 1.884–3T Coordination of branch profits tax with second-tier withholding (temporary).

[Reserved]

§ 1.884–4T Branch-level interest tax (temporary).

(a) *General rule*—(1) *Tax on interest paid by a U.S. trade or business.* In the case of a foreign corporation engaged in trade or business in the United States, any interest paid by such trade or business (within the meaning of paragraph (b) of this section) shall be treated, for purposes of sections 871, 881, 1441, and 1442, as if it were paid by a domestic corporation (other than a corporation described in section 861(c)(1), relating to a domestic corporation that meets the 80-percent foreign business requirement). Such interest shall thus be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442, if received by a foreign person and not effectively connected with the conduct by the foreign person of a trade or business in the United States, unless the interest, if paid by a domestic corporation, would be exempt under section 871(h) or 881(c) (relating to exemption for certain portfolio interest received by a foreign person), section 871(i) or 881(d) (relating, in part, to exemption for certain bank deposit interest received by a foreign person), or another provision of the Code. See paragraph (b)(8) of this section for the effect of income tax treaties on interest paid by a U.S. trade or business of a foreign corporation. For purposes of this section, interest paid by a U.S. trade or business of a foreign corporation that would be treated as portfolio interest under section 871(h) or 881(c) but for the fact that it fails to meet the requirements of section 163(f)(2)(B)(ii)(II) (relating to the legend requirement) shall nevertheless be treated as portfolio interest provided the interest arises with respect to a liability incurred by the foreign corporation prior to January 3, 1988. For purposes of this section, a foreign corporation shall be treated as engaged in trade or business in the United States for a taxable year if it owns U.S. assets at any time during the taxable year or it derives gross income during the taxable year that is effectively connected (or deemed effectively connected) with the conduct of a trade or business in the United States.

(2) *Tax on excess interest.* If the amount of interest allowable as a deduction under § 1.882–5 in computing the effectively connected taxable income of a foreign corporation for the taxable year exceeds the interest paid by a U.S. trade or business of the foreign corporation within the meaning of paragraph (b) of this section, the foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to the foreign corporation by a wholly-owned domestic corporation (other than a corporation described in section 861(c)(1)) on the last day of the foreign corporation's taxable year. Such interest

shall not be exempt from tax under any subsection of section 881. For purposes of this paragraph (a)(2), interest paid by a U.S. trade or business shall not include interest described in paragraph (b)(1)(iv) of this section (relating to certain nondeductible interest) or interest accruing in a taxable year beginning before January 1, 1987. For purposes of this § 1.884–4T, the term "excess interest" means interest described in this paragraph (a)(2).

(3) *Original issue discount.* For purposes of this section, the term "interest" includes original issue discount, as defined in section 1273(a)(1).

(4) *Example.* The application of this paragraph (a) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is allowed an interest deduction of $150 under § 1.882–5 for 1991. The interest paid by a U.S. trade or business of A (within the meaning of paragraph (b) of this section) during 1991 is as follows: $55 of portfolio interest (as defined in section 871(h)(2)) to B, a nonresident alien; $35 of interest on deposits (within the meaning of section 871(i)(2)(A)) to C, a foreign corporation; $25 of interest to foreign corporation D, which owns 15 percent of the combined voting power of A's stock, with respect to bonds issued by A; and $20 to E, a domestic corporation. Neither B, C or D is engaged in the conduct of a trade or business in the United States. A, B, C and D are residents of countries with which the United States does not have an income tax treaty. The interest payments made to B, C and E are not subject to tax under section 871(a) or 881 and are not subject to withholding under section 1441 or 1442. The payment to D is subject to withholding of $7.50 ($25X30 percent). In addition, because A's interest deduction under § 1.882–5 ($150) exceeds the amount of interest paid by a U.S. trade or business of A ($135), A is subject to a tax of $4.50 ($15X30 percent) under section 881 on the amount of the excess.

(b) *Interest paid by a U.S. trade or business*—(1) *Definition of interest paid by a U.S. trade or business.* Except as provided in paragraph (b)(3) of this section, the term "interest paid by a U.S. trade or business" means, for purposes of this section, interest paid by a foreign corporation with respect to a liability that—

(i) Is specifically identified as a liability of a U.S. trade or business of the foreign corporation on books and records maintained in the United States by the foreign corporation and either

(A) Interest on the liability is allowed as a deduction (in whole or in part) by reason of § 1.882–5(b)(3)(i) or

(B) The liability is entered on such books and records on or before the earlier of 60 days after the liability is incurred by the foreign corporation or the date on which the first payment of interest is made with respect to the liability;

(ii) Is specifically identified as a liability of a U.S. trade or business of the foreign corporation on either

(A) Financial statements that are required to be provided to a regulatory agency of the United States, a State, or the District of Columbia or

(B) Books and records of the foreign corporation that are maintained in order to comply with regulatory requirements of any agency of the United States, a State, or the District of Columbia, and are used to prepare financial statements that are required to be provided to such regulatory agency;

(iii) Is secured (during at least half the days during the portion of the taxable year in which the interest accrues) predominantly by property of the foreign corporation that is a U.S. asset (as defined in § 1.884–1T(d)) unless such liability is secured by substantially all the property of the foreign corporation; or

(iv) Gives rise to interest for which a deduction is disallowed and either—

(A) The liability is incurred or continued to purchase a U.S. asset (as defined in § 1.884–1T(d)) or

(B) The basis of a U.S. asset is increased by the amount of the disallowed deduction.

A foreign corporation may comply with the time limits specified in paragraph (b)(1)(i)(B) of this section by identifying liabilities on its books and records on or before January 3, 1989.

(2) *Requirement that all interest paid with respect to certain liabilities be consistently treated.* Except as provided in paragraph (b)(3) of this section (relating to liabilities that do not give rise to interest paid by a U.S. trade or business), any interest paid by a U.S. trade or business with respect to a liability described in paragraph (b)(1)(i) of this section (relating to liabilities on U.S. books) shall be treated as interest paid by a U.S. trade or business for the entire taxable year, and for all subsequent taxable years, until the liability to which the interest is attributable has been satisfied in full.

(3) *Liabilities that do not give rise to interest paid by a U.S. trade or business.* For purposes of this section, a liability described in paragraph (b)(1)(i) of this section (relating to liabilities on U.S. books) that is not also described in paragraph (b)(1) (ii) through (iv) of this section (relating to liabilities on regulatory or tax books, secured by U.S. assets, or that give rise to certain nondeductible interest) shall not, for any taxable year, be treated as giving rise to interest paid by a U.S. trade or business of a foreign corporation if—

(i) Interest paid (or treated as paid by reason of paragraph (b)(7) of this section) with respect to the liability during the taxable year is taken into account for any taxable year for purposes of the income tax of any foreign country as a reduction of income from sources within such country for purposes of computing a foreign tax credit or, in the case of a foreign country that provides relief from double taxation by way of an exemption system, as a reduction of income from sources within that country, or is otherwise taken into account in a manner that is inconsistent with its treatment by the foreign corporation as interest stated on the books of a U.S. trade or business, or

(ii) Except in the case of a liability of a foreign corporation engaged in the active conduct of a banking, financing or similar business (as defined in § 1.864–4(c)(5)) that is a deposit within the meaning of section 871(i)(3)(A) and that exceeds $100,000, the liability is incurred in the ordinary course of a trade or business of the foreign corporation conducted outside the United States, or

(iii) The liability is secured (during more than half the days during the portion of the taxable year in which the interest accrues) predominantly by property that is not a U.S. asset (as defined in § 1.884–1T(d)) unless such liability is secured by substantially all the property of the foreign corporation.

(4) *Interbranch interest disregarded.* Interest with respect to liabilities to another office or branch of the same foreign corporation shall be disregarded for purposes of computing the interest paid by a U.S. trade or business.

(5) *Special rule where a U.S. business constitutes 80 percent or more of a foreign corporation's business*—(i) *General rule.* If—

(A) The U.S. assets (as defined in § 1.884–1T(d)) of a foreign corporation at the close of the taxable year equal or exceed 80 percent of all money and the adjusted bases (for purposes of computing earnings and profits) of all property of the foreign corporation, and

(B) The sum of the amount of interest allowable as a deduction to the foreign corporation under § 1.882–5 for the taxable year and the amount of interest paid by the foreign corporation with respect to liabilities described in paragraph (b)(i)(iv) of this section (relating to liabilities that give rise to certain nondeductible interest) exceeds the interest paid by a U.S. trade or business of the foreign corporation (without regard to this paragraph (b)(5)),

then the amount of interest paid by a U.S. trade or business of the foreign corporation for the taxable year shall be increased by the amount of the excess described in paragraph (b)(5)(i)(B) of this section. The interest that is treated as paid by a U.S. trade or business of the foreign corporation by reason of this paragraph (b)(5) shall be treated as being paid pro rata, first, with respect to liabilities of the foreign corporation that do not, for the taxable year, already give rise to interest paid by a U.S. trade or business of the foreign corporation and are not described in paragraph (b)(3) of this section (relating to liabilities that do not give rise to interest paid by a U.S. trade or business) and, second, with respect to liabilities of the foreign corporation that do not, for the taxable year, already give rise to interest paid by a U.S. trade or business of the foreign corporation and are described in paragraph (b)(3) of this section. This paragraph (b)(5) shall apply notwithstanding any other provision of this paragraph (b).

(ii) *Example.* The application of this paragraph (b)(5) is illustrated by the following example.

Example. Foreign corporation A, a calendar year taxpayer, is allowed an interest deduction of $80 under § 1.882–5 for 1992. Before application of this paragraph (b)(5), the interest paid by the U.S. trade or business of A in 1992 is $40, of which $30 is attributable to liabilities described solely in paragraph (b)(1)(i) of this section and $10 is attributable to liabilities described in paragraph (b)(1)(iv) of this section. A pays $60 of other interest during 1992. The money and aggregate adjusted bases (for purposes of computing earnings and profits) of all property of A as of the close of 1992 is $1,000, and A has $800 of U.S. assets as of the close of 1992. Because 80 percent of the money and aggregate adjusted bases (for purposes of computing earnings and profits) of all property of A consists of U.S. assets as of the close of 1992, the interest paid by a U.S. trade or business of A in 1992 is treated as being $90 (*i.e.*, the sum of the interest deduction allowable to A under § 1.882–5 and the $10 of interest paid by A with respect to liabilities described in paragraph (b)(1)(iv) of this section). The interest paid by a U.S. trade or business of A is thus increased from $40 to $90, and ⅝ths ($50/$60) of each interest payment that, before application of this paragraph (b)(5), was not treated as paid by a U.S. trade or business of A, is treated as being paid by a U.S. trade or business of A. Such interest may be subject to tax under section 871(a) or 881, and to withholding under section 1441 or 1442.

(6) *Special rule where interest paid exceeds deductible and non-deductible interest of a U.S. trade or business*—(i) *General rule.* If the amount of interest that is both paid by a U.S. trade or business of a foreign corporation during the taxable year and accrued for that year (including interest that the foreign corporation elects under paragraph (b)(7)(i) of this section to treat as paid during the taxable year) exceeds the sum of

(A) The amount of interest allowable to the foreign corporation as a deduction under § 1.882–5 for the taxable year, and

(B) The amount of interest attributable to liabilities described in paragraph (b)(1)(iv) of this section for which a deduction is disallowed for the taxable year,

Then the amount of interest paid by a U.S. trade or business of the foreign corporation shall be reduced by the amount of such excess. Except as provided in paragraph (b)(6)(ii) of this section (relating to an election to specify liabilities that do not give rise to interest paid by a U.S. trade or business), the amount of the excess shall reduce interest paid by a U.S. trade or business of the foreign corporation first with respect to liabilities described in paragraph (b)(1)(i) (relating to liabilities on U.S. books) that are not also described in paragraphs (b)(1) (ii) through (iv) of this section (relating to liabilities on regulatory or tax books, secured by U.S. assets, or that give rise to certain nondeductible interest), and then, if such interest has not been reduced to zero, with respect to the group of liabilities described in paragraphs (b)(1) (ii) and (iii) of this section. The reduction of interest paid with respect to each group of liabilities (*i.e.*, liabilities described solely in paragraph (b)(1)(i) of this section and liabilities described in paragraphs (b)(1) (ii) and (iii) of this section) shall be made beginning with interest attributable to the latest-incurred liability and continuing, in reverse chronological order, with interest paid with respect to the next-latest incurred liability. The interest paid with respect to a liability must be reduced to zero before a reduction is made with respect to interest attributable to the next-latest incurred liability. Where only a portion of the interest paid with respect to a liability is reduced by reason of this paragraph (b)(6)(i), the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next latest payment until the amount of interest paid by the U.S. trade or business has been reduced by the amount specified in this paragraph (b)(6)(i). The amount of interest paid by the U.S. trade or business that is not treated as interest paid by a U.S. trade or business of the foreign corporation by reason of this paragraph (b)(6)(i) shall not be subject to tax under section 871(a) or 881.

(ii) *Election to specify liabilities that do not give rise to interest paid by a U.S. trade or business.* For purposes of reducing the amount of interest paid by a U.S. trade or business under paragraph (b)(6)(i) of this section, a foreign corporation may, instead of using the method described in paragraph (b)(6)(i) of this section, elect for any taxable year to specify which liabilities will not be treated as giving rise to interest paid by a U.S. trade or business or will be treated as giving rise only in part to such interest. The election may be made only with respect to liabilities described in paragraph (b)(1)(i) of this section that are not also described in paragraphs (b)(1) (ii) through (iv) of this section and that were not identified as a liability of a U.S. trade or business during a preceding taxable year. The interest paid during the taxable year with respect to a liability specified under this paragraph (b)(6)(ii) must be reduced to zero before a reduction is made with respect to interest attributable to the next specified liability. If all interest payments with respect to a specified liability, when added to all interest payments with respect to other liabilities specified under this paragraph (b)(6)(ii), would exceed the amount of the reduction under paragraph (b)(6)(i) of this section, then only a portion of the interest paid with respect to that specified liability shall be reduced under this paragraph (b)(6)(ii), and the reduction shall be made beginning with the last interest payment made with respect to the liability during the taxable year and continuing, in reverse chronological order, with the next-latest payment until the amount of interest paid by a U.S. trade or business has been reduced by the amount of the reduction under paragraph (b)(6)(i) of this section. A foreign corporation that elects to have this paragraph (b)(6)(ii) apply shall note on its books and records maintained in the United States that the liability is not to be treated as giving rise to interest paid by a U.S. trade or business, or is to be treated as giving rise to such interest only in part. Such notation must be made after the close of the taxable year in which the foreign corporation pays the interest and prior to the due date (with extensions) of the foreign corporation's income tax return for the taxable year. The amount of interest paid by a U.S. trade or business that is not treated as interest paid by a U.S. trade or business by reason of this

paragraph (b)(6)(ii) shall not be subject to tax under section 871(a) or 881.

(iii) *Examples.* The application of this paragraph (b)(6) is illustrated by the following examples.

Example (1). Foreign corporation A, a calendar year, accrual method taxpayer, is allowed an interest deduction of $200 for 1990 under § 1.882–5. The amount of interest paid by a U.S. trade or business of A during 1990 is as follows:

(1) $100 to B, a domestic corporation, with respect to a note issued on March 10, 1990, and secured by real property located in the United States;

(2) $60 to C, an individual resident of country X who is entitled to a 10 percent rate of withholding on interest payments under the income tax treaty between the United States and X, with respect to a note issued on October 15, 1989, which gives rise to interest subject to tax under section 871(a);

(3) $80 to D, an individual resident of country Y who is entitled to a 15 percent rate of withholding on interest payments under the income tax treaty between the United States and Y, with respect to a note issued on February 15, 1990, which gives rise to interest subject to tax under section 871(a);

(4) $70 of portfolio interest (as defined in section 871(h)(2)) to E, a nonresident alien, with respect to a bond issued on March 1, 1990; and

(5) $30 to F, a foreign corporation that is a qualified resident of country X, with respect to a note issued on January 10, 1990.

The interest paid by a U.S. trade or business of A during 1990 accrues during 1990 for purposes of calculating A's interest deduction under § 1.882–5 except that the amount of interest paid to F increases A's basis in a U.S. asset under section 263A but is not deductible as an interest expense in 1990. A does not make an election under paragraph (b)(6)(ii) of this section to specify liabilities that do not give rise to interest paid by a U.S. trade or business. The amount of interest paid by a U.S. trade or business of A in 1990 is limited under paragraph (b)(6)(i) of this section to $230, the sum of the interest allowable to A as a deduction for 1990 ($200) and the amount of interest paid during 1990 to F that increases the basis in a U.S. asset of A ($30). The amount of interest paid by a U.S. trade or business of A must thus be reduced by $110 ($340–$230) under paragraph (b)(6)(i) of this section. The reduction is first made with respect to interest attributable to liabilities described only in paragraph (b)(1)(i) of this section (*i.e.*, liabilities not on regulatory books or connected with U.S. assets) and, within the group of liabilities described only in paragraph (b)(1)(i) of this section, is first made with respect to the latest incurred liability. Thus, the $70 of interest paid to E with respect to the bond issued on March 1, 1990, and $40 of the $80 of interest paid to D with respect to the note issued on February 15, 1990, are not treated as paid by a U.S. trade or business of A. The interest paid to D is no longer subject to tax under section 871(a), and A may claim a refund of amounts withheld with respect to the interest payments. There is no change in the tax consequences to E because the interest received by E was portfolio interest and was not subject to tax when it was interest paid by a U.S. trade or business.

Example (2). Assume the same facts as in *Example (1)* except that A makes an election under paragraph (b)(6)(ii) of this section to specify which liabilities are not to be treated as giving rise to interest paid by a U.S. trade or business. Also assume that the liability to C was identified in 1989 as a liability that gives rise to interest paid by a U.S. trade or business. A may not specify, as liabilities that do not give rise to interest paid by a U.S. trade or business, the liabilities to B or F, which are described in paragraphs (b)(1)(iii) and (iv) of this section, respectively, or the liability to C, which was identified in a preceding taxable year as a liability that gives rise to interest paid by a U.S. trade or business. A specifies the liability to D, who would be taxable at a rate of 15 percent on interest paid with respect to the liability, as a liability that does not give rise to interest paid by a U.S. trade or business, and D is therefore not subject to tax under section 871(a) and is entitled to a refund of amounts withheld with respect to the interest payments. A also specifies the liability to E as a liability that gives rise to interest paid by a U.S. trade or business only in part. As a result, $30 of the $70 of interest paid to E is not treated as interest paid by a U.S. trade or business of A, but this does not change the tax consequences to E because the interest is portfolio interest that is not subject to tax.

(7) *Election to reduce excess interest where interest is paid and accrued in different years*—(i) *Accrual before year of payment.* A foreign corporation that accrues an interest expense that would be interest paid by a U.S. trade or business of the foreign corporation in one or more later taxable years (before application of this paragraph (b)(7)(i)) may elect under this paragraph (b)(7) to reduce its excess interest for the taxable year in which the interest accrues by the amount of such interest expense. In such case, the interest shall be treated as interest paid by a U.S. trade or business of the foreign corporation on the last day of the taxable year in which the interest expense accrues and shall not again be treated as interest paid by a U.S. trade or business of the foreign corporation in the taxable year in which it is actually paid. This paragraph (b)(7)(i) shall apply only if the election is in effect for both the taxable year in which the interest expense accrues and the taxable year in which the interest is paid. This paragraph (b)(7)(i) shall not apply to interest expenses that accrued in a taxable year beginning before January 1, 1987.

(ii) *Payment before year of accrual.* In the case of interest paid by a U.S. trade or business of a foreign corporation that will accrue as an expense in one or more later taxable years, the foreign corporation may elect under this paragraph (b)(7) to reduce (but not below zero) the amount of its excess interest for such later taxable year by the amount of such interest. The preceding sentence shall apply only if the election is in effect for both the taxable year in which the interest is paid and the taxable year in which the interest expense accrues. With respect to interest paid in a taxable year beginning before January 1, 1987, this paragraph (b)(7)(ii) shall apply only if the interest was income from sources within the United States and an election under this paragraph (b)(7) is in effect for the taxable year in which the interest accrues.

(iii) *Requirements for election.* A foreign corporation electing the provisions of this paragraph (b)(7) shall attach to its timely-filed income tax return a statement that it elects to have the provisions of both paragraph (b)(7)(i) and (ii) apply. The election shall be effective for the taxable year to which the return relates and for all subsequent taxable years unless the Commissioner consents to revocation of the election. In the case of interest paid or accrued in a taxable year ending on or before December 1, 1988, an election may be made by attaching the statement to an amended Form 1120F and filing both documents on or before January 3, 1988. If interest is deemed paid before January 3, 1988, by reason of paragraph (b)(7)(i) of this section, no penalties or interest shall be due with respect to any tax imposed under section 871(a) or 881 on such interest provided such tax is paid on or before January 3, 1989.

(iv) *Examples.* The following examples illustrate the application of this paragraph (b)(7).

Example (1). Foreign corporation A, a calendar year, accrual method taxpayer, is allowed an interest deduction of $100 under § 1.882–5 for 1987. A has $60 of interest paid by a U.S. trade or business in 1987 before application of this paragraph (b)(7). A has an interest expense of $20 which properly accrues for tax purposes in 1987 but is not paid until 1988. When the interest is paid in 1988 it will meet the requirements for interest paid by a U.S. trade or business under paragraph (b)(1) of this section. A makes a timely election under this paragraph (b)(7) to treat the accrued interest as if it were paid in 1987. A will be treated as having interest paid by a U.S. trade or business of $80 for 1987 and excess interest of $20 in 1987. The $20 of interest treated as interest paid by a U.S. trade or business of A in 1987 will not again be treated as interest paid by a U.S. trade or business of A in 1988.

Example (2). Foreign corporation A, a calendar year, accrual method taxpayer, has $60 of interest paid by a U.S. trade or business in 1987. The interest expense does not accrue until 1988 and the interest deduction that is allowable to A under

§ 1.882–5 is zero for 1987 and $60 for 1988. A makes an election under this paragraph (b)(7) with respect to 1987. As a result of the election, the $60 of interest paid by a U.S. trade or business of A in 1987 reduces the amount of A's excess interest for 1988.

(8) *Effect of treaties*—(i) *Payor's treaty.* In the case of interest paid by a U.S. trade or business of a foreign corporation, relief shall be available under an article of an income tax treaty between the United States and the foreign corporation's country of residence relating to interest paid by the foreign corporation only if—

(A) The corporation is a qualified resident (as defined in § 1.884–5T(a)) of that foreign country for the taxable year in which the interest is paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) or for the prior taxable year and such portion of the current taxable year that ends with the date of the interest payment or

(B) The foreign corporation meets, with respect to the interest payment, the requirements of the limitation on benefits or similar article in the treaty and such article entered into force after December 31, 1986.

(ii) *Recipient's treaty.* A foreign person (other than a foreign corporation) that derives interest that is interest paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) shall be entitled to claim benefits under provisions of an income tax treaty between the United States and its country of residence relating to interest derived by the foreign person. A foreign corporation may claim such benefits if it meets, with respect to the interest payment, the requirements of the limitation on benefits or similar article in the treaty and such article entered into force after December 31, 1986. A foreign corporation may otherwise claim such benefits only if

(A) The foreign corporation is a qualified resident (as defined in § 1.884–5T(a)) of the foreign country for the taxable year in which the interest is paid by a U.S. trade or business (or is treated as paid by a U.S. trade or business under paragraph (b)(7) of this section) or for the prior taxable year and such portion of the current taxable year that ends with the date of the interest payment and

(B) In the case of interest paid in a taxable year beginning after December 31, 1988, with respect to an obligation with a maturity not exceeding one year, each foreign corporation that beneficially owned the obligation prior to maturity was a qualified resident (as defined in § 1.884–5T(a)) of a foreign country with which the United States has an income tax treaty or met the requirements of the limitation on benefits or similar article in a treaty with respect to the interest payment and such article entered into force after December 31, 1986.

(iii) *Treaties other than income tax treaties.*

[Reserved]

(iv) *Effect of income tax treaties on interest paid by a partnership.* If a foreign corporation is a partner (directly or indirectly) in a partnership that is engaged in a trade or business in the United States, the relief that may be claimed under an income tax treaty with respect to the foreign corporation's distributive share of interest paid or treated as paid by the partnership shall not exceed the relief that would be available under paragraph (b)(8) (i) and (ii) of this section if such interest were interest paid by a U.S. trade or business of the foreign corporation. See paragraph (c)(2) of this section for the effect on a foreign corporation's excess interest of interest paid by a partnership of which the foreign corporation is a partner.

(v) *Examples.* The following examples illustrate the application of this paragraph (b)(8).

Example (1). The income tax treaty between the United States and country X, of which foreign corporation A is a qualified resident, provides that the United States may not impose a tax on interest paid by a corporation that is a resident of that country (and that is not a domestic corporation) if the recipient of the interest is a nonresident alien or a foreign corporation. Interest paid by a U.S. trade or business of A is not subject to tax under section 871(a) or 881 regardless of whether the recipient is entitled to benefits under an income tax treaty.

Example (2). A, a foreign corporation and B, a nonresident alien, are partners in a partnership that owns and operates U.S. real estate and each has a distributive share of partnership interest deductions equal to 50 percent of the interest deductions of the partnership. There is no income tax treaty between the United States and the countries of residence of A and B. The partnership pays $1,000 of interest to a bank that is a resident (but not a qualified resident) of foreign country Y, which has an income tax treaty in effect with the United States providing that the rate of tax on U.S. source interest paid to a resident of that country may not exceed 5 percent. The partnership is required to withhold at a rate of 30 percent on $500 of the interest paid to the bank (*i.e.*, A's 50 percent distributive share of interest paid by the partnership) because the bank is not a qualified resident of Y and cannot, under paragraph (b)(8)(iv) of this section, claim greater treaty benefits than it could claim if the $500 were interest paid by a U.S. trade or business of A.

(c) *Excess interest*—(1) *Reporting and payment of tax on excess interest.* The amount of tax due under section 884(f) and this section with respect to excess interest of a foreign corporation shall be reported on the foreign corporation's income tax return for the taxable year in which the excess interest is treated as paid under section 884(f)(1)(B) and paragraph (a)(2) of this section, and shall not be subject to withholding under section 1441 or 1442. The tax shall be due and payable as provided in section 6151 and such other sections of Subtitle F of the Internal Revenue Code as apply.

(2) *Interest paid by a partnership*—(i) *General rule.* Except as otherwise provided in this paragraph (c)(2)(i) and in paragraph (c)(2)(ii) of this section, if a foreign corporation is a partner in a partnership that is engaged in trade or business in the United States, the amount of the foreign corporation's distributive share of interest paid or accrued by the partnership shall reduce (but not below zero) the amount of the foreign corporation's excess interest for the year in which such interest is taken into account by the foreign corporation for purposes of calculating the interest deduction allowable to the foreign corporation under § 1.882–5. A foreign corporation's excess interest shall not be reduced by its distributive share of partnership interest that is attributable to a liability described in paragraph (b)(3) of this section (relating to certain liabilities that do not give rise to interest paid by a U.S. trade or business) or would be described in such paragraph (b)(3) if entered on the partner's books. The amount that reduces the foreign corporation's excess interest under this paragraph (c)(2) shall not in any taxable year exceed that proportion of the foreign corporation's distributive share of interest paid or accrued by the partnership that is allowed to the foreign corporation as a deduction under § 1.882–5. See paragraph (b)(8)(iv) of this section for the effect of income tax treaties on interest paid by a partnership.

(ii) *Special rule for interest that is paid and accrued in different years.* Paragraph (c)(2)(i) of this section shall not apply to any portion of a foreign corporation's distributive share of partnership interest that is paid and accrued in different taxable years unless the foreign corporation has an election in effect under paragraph (b)(7) of this section that is effective with respect to such interest and any tax due under section 871(a) or 881 with respect to such interest has been deducted and

withheld at source in the earlier of the taxable year of payment or accrual.

(3) *Effect of treaties*—(i) *General Rule.* The rate of tax imposed on the excess interest of a foreign corporation that is a qualified resident of a country with which the United States has an income tax treaty shall not exceed the rate provided under such treaty that would apply with respect to interest paid by a domestic corporation to that foreign corporation.

(ii) *Provisions in income tax treaties relating to interest paid by a foreign corporation.* Any provision in an income tax treaty that exempts or reduces the rate of tax on interest paid by a foreign corporation does not prevent imposition of the tax on excess interest or reduce the rate of such tax.

(iii) *Treaties other than income tax treaties.*

[Reserved]

(4) *Examples.* The following examples illustrate the application of paragraph (c) (2) and (3) of this section.

Example (1). Foreign corporation A, a calendar year taxpayer, is not a resident of a foreign country with which the United States has an income tax treaty. A is engaged in the conduct of a trade or business both in the United States and in foreign countries, and owns a 50 percent interest in partnership X, a calendar year taxpayer engaged in the conduct of a trade or business in the United States. For 1989, all of X's liabilities are of a type described in paragraph (b)(1) of this section (relating to liabilities on U.S. books) and none are described in paragraph (b)(3)(i) of this section (relating to certain interest giving rise to a foreign tax benefit). A's distributive share of interest paid by X in 1989 is $20. For 1989, A is allowed a deduction of $150 under § 1.882–5, $120 of which is attributable to interest paid by a U.S. trade or business. Thus, the amount of A's excess interest for 1989, before application of paragraph (c)(2)(i) of this section, is $30. Under paragraph (c)(2)(i) of this section, A's $30 of excess interest is reduced by $20, representing A's pro rata share of interest paid by X. Thus, the amount of A's excess interest for 1989 is reduced to $10. A is subject to a tax of 30 percent on its $10 of excess interest.

(d) *Stapled entities.* For treatment of a foreign corporation that is a stapled entity by reason of section 269B, see § 1.884–1T(i).

(e) *Effective date.* This section is effective for taxable years beginning after December 31, 1986, and for payments of interest described in section 884(f)(1)(A) made during taxable years of the payor beginning after December 31, 1986.

§ 1.884–5T Qualified resident (temporary).

(a) *Definition of a qualified resident.* A foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty in effect if the foreign corporation is a resident of that country within the meaning of the income tax treaty between the United States and that country and the foreign corporation either—

(1) Meets the requirements of paragraph (b) of this section (relating to stock ownership) and the requirements in paragraph (c) of this section (relating to base erosion),

(2) Meets the requirements of paragraph (d) of this section (relating to a foreign corporation whose stock is primarily and regularly traded on an established securities market in its country of residence or in the United States),

(3) Meets the requirements of paragraph (e) of this section (relating to a foreign corporation engaged in an active trade or business in its country of residence), or

(4) Obtains a ruling as provided in paragraph (f) of this section.

(b) *Stock ownership requirement*—(1) *General rule.* A foreign corporation satisfies the stock ownership requirement of this paragraph (b) for the taxable year or a portion of the taxable year if—

(i) 50 percent or more of its stock (by value) is beneficially owned, or is treated as beneficially owned by reason of paragraph (b)(2) of this section, during at least half of the number of days in the foreign corporation's taxable year (or at least half the number of days in the portion of the taxable year) by individuals who are either residents of the foreign country of which the foreign corporation is a resident or citizens or individual residents of the United States,

(ii) It obtains the documentation required under paragraph (b)(3) (i) or (ii) of this section to show that the requirements of paragraph (b)(1)(i) have been met, and

(iii) Such documentation is maintained and made available to the District Director as provided in paragraph (b)(7) of this section.

(2) *Rules for determining ownership*—(i) *Constructive ownership*—(A) *General rules for attribution.* For purposes of this section, stock owned by a corporation, partnership, trust or estate shall be treated as owned proportionately by its shareholders, partners, or beneficiaries. The proportionate interest rules of this paragraph (b)(2)(i) shall apply successively upward through a chain of ownership. Except as otherwise specifically provided, stock treated as owned by a person by reason of this paragraph (b)(2)(i) shall, for purposes of applying this paragraph (b)(2)(i), be treated as actually owned by such person.

(B) *Partnerships.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the lesser of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock, (B) The partner's percentage distributive share of gain from disposition of the stock by the partnership, or (C) The partner's percentage share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(C) *Trusts and Estates.* In general, a beneficiary of a trust (including a grantor thereof) or a beneficiary of an estate shall be treated as having an interest in stock owned by a trust or estate in proportion to the beneficiary's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B) and the regulations thereunder, except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock and the interest rate used to compute the income beneficiary's actuarial interest in the trust shall equal the income beneficiary's actual rate of return on the fair market value of the stock for the taxable year. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (b)(2)(i)(C), shall not be considered owned by an individual who is a resident of a country with which the United States has an income tax treaty in effect unless all potential beneficiaries with respect to the stock are qualified residents.

(D) *Corporations.* A shareholder shall be treated as having an interest in stock of a foreign corporation owned by another corporation in a proportion equal to the lesser of (1) the shareholder's percentage share of current earnings and profits of the corporation as determined under the principles of section 1248, (2) the shareholder's percentage share of accumulated earnings and profits of the corporation as determined under the principles of section 1248, or (3) the shareholder's percentage share of assets upon liquidation of the corporation. If

there is an agreement, express or implied, that designated pools of earnings are to be paid only with respect to certain stock, then any shareholder not entitled to share in a designated pool of earnings shall not be considered to be a shareholder with respect to such stock.

(ii) *Governments treated as individual shareholders.* For purposes of this section, the government of the country of which a foreign corporation is a resident (or a political subdivision or local authority of such country), or the United States, a State, the District of Columbia, or a political subdivision or local authority of a State shall be treated as an individual resident of such foreign country or of the United States, as the case may be.

(iii) *Publicly-traded corporations treated as individual shareholders.* For purposes of this section—

(A) A domestic corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the United States shall be treated as an individual resident of the United States and

(B) A foreign corporation whose stock is primarily and regularly traded on an established securities market (within the meaning of paragraph (d) of this section) in the country of which it is a resident (within the meaning of the income tax treaty between the United States and such country) shall be treated as an individual resident of such country for purposes of determining the ownership of stock in another foreign corporation that is a resident of the same foreign country.

Stock that is treated as owned by individual residents by reason of this paragraph (b)(2)(iii) shall not be treated as owned by any other person for purposes of determining stock ownership under this paragraph (b).

(iv) *Publicly-traded stock treated as owned by individuals.* A class of stock of a corporation that is primarily and regularly traded on an established securities exchange (within the meaning of paragraph (d) of this section) in the United States or in the foreign corporation's country of residence shall be treated as owned by individual residents of the United States or such foreign country, as the case may be.

(3) *Required documentation.* In order to satisfy the stock ownership requirement of paragraph (b)(1) of this section for a taxable year, a foreign corporation must, before the due date (including extensions) for filing its income tax return for the taxable year (or, where applicable, in the case of a foreign corporation claiming treaty benefits under § 1.884–4T(b)(8) (i) or (ii), before the interest payment) obtain the following written documentation from a sufficient number of its direct or indirect individual shareholders (including a government or corporation treated as an individual shareholder by reason of paragraph (b)(2) (ii) or (iii) of this section) to show that it has satisfied the 50 percent ownership test of paragraph (b)(1)(i) of this section:

(i) Individual documentation described in paragraph (b)(4) of this section and, if applicable, an intermediary ownership statement described in paragraph (b)(5) of this section from each intermediary standing in the chain of the individual shareholder's ownership of his interest in the foreign corporation, or

(ii) An intermediary verification statement described in paragraph (b)(6) of this section and, if applicable, an intermediary ownership statement described in paragraph (b)(5) of this section from each intermediary standing in the chain of the verifying intermediary's ownership of its interest in the foreign corporation.

(4) *Individual documentation.* The individual documentation shall consist of a statement described in paragraph (b)(4)(i) of this section from the individual shareholder (or from a government or corporation treated as an individual shareholder by reason of paragraph (b)(2) (ii) or (iii) of this section) and, in the case of any individual who is not a citizen or resident of the United States, a certificate of residency described in paragraph (b)(4)(ii) of this section.

(i) *Statement from individual shareholder or from government or corporation treated as an individual shareholder.* A statement from an individual shareholder shall be a written statement signed by the shareholder under penalties of perjury stating that the individual is a direct or indirect beneficial owner of an interest in the foreign corporation and that the individual does not own such interest on behalf of another person. In addition, the statement must include the following information:

(A) The number of shares owned directly or indirectly by the individual shareholder in each class of stock of the foreign corporation;

(B) The period of time during the taxable year during which the individual shareholder owned the stock;

(C) The name and permanent address of the individual shareholder;

(D) The country of residence of the individual shareholder; and

(E) If the stock in the foreign corporation is held indirectly by the individual shareholder through one or more intermediary, whether acting as nominees or beneficial interest holders, then the name and address of each such intermediary and the description of the chain of ownership through which the individual shareholder holds stock in the foreign corporation, to the extent known to the individual shareholder.

A statement from a government treated as an individual shareholder by reason of paragraph (b)(2)(ii) of this section shall be signed by the Competent Authority of the foreign country, as defined in the income tax treaty between the foreign country and the United States, shall state that the government is a direct or indirect beneficial owner of an interest in the foreign corporation, and shall contain the information specified in paragraph (b)(4)(i) (A), (B) and (E) of this section. A statement from a corporation that is treated as an individual shareholder under paragraph (b)(2)(iii) of this section shall be signed under penalties of perjury by a person authorized to sign a tax return on behalf of the corporation, shall state that the corporation is a direct or indirect beneficial owner of the foreign corporation and that the corporation's stock is primarily and regularly traded on an established security exchange (within the meaning of paragraph (d) of this section) in the United States or its country of residence, and shall contain the information specified in paragraph (b)(4)(i) (A) through (E).

(ii) *Certificate of residency.* A certificate of residency must be signed by the authorities of the country of residence of the individual shareholder and must state that the individual is a resident of that country for purposes of its income tax laws. The authorities shall be the Competent Authority of the foreign country, as defined in the income tax treaty between the foreign country and the United States, or such other governmental office of the foreign country that customarily provides statements of residence. Such statement shall have the official seal of the Competent Authority (or such other governmental office of the named foreign country that customarily provides statements of residence) if it generally affixes such a seal to official documents. An individual shall be considered a resident of a country with which the United States has an income tax treaty if such individual is considered a resident of such country under the provisions, if any, of the income tax treaty between the United

States and such country or, if there are no such provisions, if such individual is considered a resident of such country for purposes of such country's income tax laws.

(5) *Intermediary ownership statement.* An intermediary ownership statement must be obtained from each intermediary in the relevant chain of ownership described in paragraph (b)(3)(i) or (ii) of this section regardless of whether the intermediary is merely a legal owner or recordholder acting as nominee for an individual or for another intermediary, or a beneficial owner through which an individual or another intermediary indirectly owns stock in the foreign corporation. The intermediary ownership statement shall be signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the intermediary and shall contain the following information:

(i) The number of shares owned directly or indirectly by the intermediary in each class of stock of the foreign corporation;

(ii) The period of time during the taxable year during which the intermediary owned directly or indirectly the stock described in paragraph (b)(5)(i) of this section;

(iii) The name and principal place of business of the intermediary (*i.e.*, the name of a corporation or partnership and the address of its principal place of business, or the name and permanent address of all trustees of a trust (or equivalent under foreign law) or of all executors of an estate (or equivalent under foreign law));

(iv) The country of residence of the intermediary;

(v) If the stock is held as nominee for an individual or another intermediary, the name and permanent address of the individual, or the name and principal place of business of such other intermediary;

(vi) If the stock is not held as nominee for an individual or another intermediary, the amount and nature of the interest owned in the intermediary issuing the statement by its direct shareholder, partner or beneficiary which indirectly owns an interest in the foreign corporation and the period of time during the taxable year for which the interest in the intermediary was owned by such stockholder, partner, or beneficiary; and

(vii) If the intermediary owns stock in the foreign corporation indirectly through one or more other intermediaries as nominees or beneficial interest holders, the name and principal place of business of each such intermediary and a description of the chain of ownership through which the intermediary holds the stock described in paragraph (b)(5)(i) of this section to the extent known by the intermediary.

(6) *Intermediary verification statement.* An intermediary verification statement is a statement from any intermediary standing in the chain of the ultimate individual shareholder's ownership of his interest in the foreign corporation (or in the chain of ownership of a government or corporation treated as an individual shareholder under paragraph (b)(1)(ii) or (iii) of this section) certifying that stock in the foreign corporation owned by the verifying intermediary as a nominee or beneficial interest holder is owned directly or indirectly by one or more individuals described in paragraph (b)(1)(i) of this section. An intermediary verification statement may be made only by a domestic corporation, a resident of the United States, or a resident (for treaty purposes) of a country with which the United States has an income tax treaty in effect. The intermediary verification statement shall be signed under penalties of perjury by the individual (if the verifying intermediary is an individual) or by a person that would be authorized to sign a tax or tax information return on behalf of the intermediary (if the verifying intermediary is not an individual) and shall contain the following information:

(i) A statement that the verifying intermediary has obtained individual documentation described in paragraph (b)(4) of this section (or an intermediary verification statement described in this paragraph (b)(6) that is received from an upper-tier intermediary) that establishes that the stock of the foreign corporation that is the subject of the verification is in fact owned by individuals described in paragraph (b)(1)(i) of this section or by a government or corporation treated as such an individual by reason of paragraph (b)(2)(ii) or (iii) of this section;

(ii) A statement that the verifying intermediary has obtained an intermediary ownership statement described in paragraph (b)(5) of this section from every intermediary standing in the chain of ownership between the verifying intermediary and any indirect individual shareholder for whom documentation described in paragraph (b)(6)(i) of this section is obtained (or between the verifying intermediary and any upper-tier intermediary that has issued an intermediary verification statement described in this paragraph (b)(6));

(iii) An agreement to make available to the Commissioner at such time and place as the Commissioner may request the underlying documentation described in paragraphs (b)(6)(i) and (ii) of this section;

(iv) A specific and valid waiver of any right to bank secrecy or other secrecy under the laws of the country in which the verifying intermediary is located, with respect to any individual documentation, intermediary verification statement and intermediary ownership statement which the verifying intermediary has obtained pursuant to paragraphs (b)(6)(i) and (ii) of this section;

(v) The number of shares in each class of stock of the foreign corporation that are owned directly or indirectly by the verifying intermediary and that is covered by the intermediary verification statement;

(vi) The period of time during the taxable year during which the verifying intermediary owned directly or indirectly the stock described in paragraph (b)(6)(v) of this section;

(vii) The name and the principal place of business of the verifying intermediary;

(viii) The country of residence of the verifying intermediary; and

(ix) If the verifying intermediary owns stock in the foreign corporation indirectly through one or more other intermediaries as nominees or beneficial interest holders, the name and principal place of business of each such intermediary and a description of the chain of ownership through which the verifying intermediary holds the stock described in paragraph (b)(6)(v) of this section, to the extent known to the verifying intermediary.

(7) *Availability of documents for inspection*—(i) *Retention of documents by the foreign corporation.* The documentation described in paragraph (b)(3) of this section must be retained by the foreign corporation until expiration of the period of limitations for the taxable year to which the documentation relates and must be made available for inspection by the District Director at such time and place as the District Director may request.

(ii) *Retention of documents by an intermediary issuing an intermediary verification statement.* The documentation upon which an intermediary relies to issue an intermediary verification statement under paragraph (b)(6) of this section must be retained by the intermediary for a period of six years from the date of issuance of the intermediary verification statement and must be made available for inspection by the District Director at such time and place as the District Director may request.

(8) *Examples.* The application of this paragraph (b) is illustrated by the following examples.

Example (1). Foreign corporation A is a resident of country L which has an income tax treaty in effect with the issued and outstanding consisting of 1,000 shares, which are beneficially owned by the following alien individuals, directly or by application of paragraph (b)(2) of this section:

Individual	Shares owned [1]	Percentage
T—resident of the U.S.	200	20
U—resident of country L	400	40
V—resident of country M	100	10
W—resident of country L	210	21
X—resident of country N	90	9
Total	1,000	100

[1] Shares owned, directly or by application of paragraph (b)(2) of this section.

(i) T owns his 200 shares directly and is a beneficial owner.

(ii) U and V each own respectively an 80 percent and a 20 percent actuarial interest in a foreign trust FT which beneficially owns 100 percent of the stock of a foreign corporation B with bearer shares which beneficially owns 500 shares of foreign corporation A. Foreign corporation B is incorporated in a country that does not have an income tax treaty with the United States. The foreign trust has deposited the bearer shares it owns in foreign corporation B with a bank in a foreign country which has an income tax treaty with the United States.

(iii) W beneficially owns all the shares of foreign corporation C, which are registered in the name of individual Z, a nominee, who resides in Country L; foreign corporation C beneficially owns a 70 percent interest in foreign corporation D, which beneficially owns 300 shares of foreign corporation A. Foreign corporation D's shares are bearer shares which foreign corporation C (not a resident of a country with which the United States has an income tax treaty) has deposited with a bank in a foreign country that has an income tax treaty with the United States.

(iv) X beneficially owns a 30 percent interest in foreign corporation D.

(v) Countries M (where V resides) and N (where X resides) have no income tax treaty with the United States.

Foreign corporation A is a qualified resident of country L if it obtains the documentation either from individuals U and W or from individuals T and U, since either combination of qualifying ultimate individual shareholding in foreign corporation A will add up to at least 50 percent. The shareholdings of individuals V and X are ignored in determining whether foreign corporation A meets the stock ownership of this paragraph (b) since neither of them is a U.S. citizen or a resident of the United States or of a country with which the United States has an income tax treaty.

Example (2). Assume the same facts as in *Example (1)* and assume that foreign corporation A chooses to obtain documentation with respect to individuals T and U.

(i) With respect to T, foreign corporation A must obtain the individual documentation regarding T's shareholding in foreign corporation A which, pursuant to paragraph (b)(3)(i) and (b)(4) of this section, consists of an individual statement by T, as described in paragraph (b)(4)(i) of this section. No certificate of residency need be furnished since T is a U.S. resident.

(ii) As to U's shareholding in foreign corporation A, U must provide the foreign trust FT with the individual documentation described in paragraph (b)(4) of this section; the trustees of FT must provide the depository bank holding foreign corporation B's bearer shares with an intermediary ownership statement concerning its indirect beneficial ownership of foreign corporation A's shares and must attach to it the individual documentation provided by U. The depository bank has the choice of providing foreign corporation B with either (A) an intermediary ownership statement regarding its direct ownership of shares in foreign corporation B on behalf of FT, to which must then be attached the individual documentation issued by U and the intermediary ownership statement issued by FT, or (B) an intermediary verification statement as described in paragraph (b)(6) of this section, in which case foreign corporation B would not be provided with U's individual documentation or FT's intermediary ownership statement, both of which are retained by the depository bank. In either case, foreign corporation B must then provide foreign corporation A with an intermediary ownership statement regarding its direct beneficial ownership of shares in foreign corporation A and, as the case may be, either (A) U's individual documentation and the intermediary ownership statements by FT and the depository bank, or (B) the depository bank's intermediary verification statement. Thus, with respect to U, foreign corporation A must obtain under paragraph (b)(3)(i) of this section the individual documentation regarding U and an intermediary ownership statement from each intermediary standing in the chain of U's indirect beneficial ownership of shares in foreign corporation A, *i.e.*, from FT, the depository bank and foreign corporation B. In the alternative, foreign corporation A must obtain under paragraph (b)(3)(ii) of this section an intermediary verification statement issued by the depository bank and an intermediary ownership statement from foreign corporation B, which, in this example, is the only intermediary standing in the chain of ownership of the verifying intermediary (*i.e.*, the depository bank).

Example (3). Assume the same facts as in *Example (1).* In addition, assume that foreign corporation A chooses to obtain documentation with respect to individuals U and W. With respect to U, foreign corporation A must obtain the same documentation that is described in *Example (2).* With respect to W, foreign corporation A must obtain, under paragraph (b)(3)(i) of this section, individual documentation regarding W and an intermediary ownership statement from each intermediary standing in the chain of W's indirect beneficial ownership of shares in foreign corporation A, *i.e.*, from individual Z, foreign corporation C, the depository bank in the foreign treaty country, and foreign corporation D. In the alternative, foreign corporation A must obtain, under paragraph (b)(3)(ii) of this section, either (i) an intermediary verification statement by the depository bank in the foreign treaty country and an intermediary ownership statement from foreign corporation D or (ii) an intermediary verification statement from individual Z and an intermediary ownership statement from each intermediary standing in the chain of ownership of shares in foreign corporation A, *i.e.*, from foreign corporation C, the depository bank in the foreign treaty country and foreign corporation D. Corporation C may not issue an intermediary verification statement because it is not a resident of a country with which the United States has an income tax treaty.

(c) *Base erosion.* A foreign corporation satisfies the requirement relating to base erosion for a taxable year (or for a portion of a taxable year) if it establishes that less than 50 percent of its income for the taxable year (or for the portion of the taxable year) is used (directly or indirectly) to meet liabilities (such as liabilities to pay interest, rents, royalties, or reinsurance premiums) to persons who are not residents (or, in the case of foreign corporations, qualified residents) of the foreign country of which the foreign corporation is a resident and who are not citizens or residents (or, in the case of domestic corporations, qualified residents) of the United States. Whether a domestic corporation is a qualified resident of the United States shall be determined under the principles of this section. The meeting of a liability does not include a repayment of the principal amount of an obligation. For purposes of this paragraph (c), a liability is met in the taxable year (or portion of the taxable year) in which the satisfaction, in whole or in part, of such liability gives rise (or would give rise if the portion of the taxable year were a short taxable year) to a tax benefit (including a deduction, an increase in the basis of an asset, or a tax credit) under U.S. tax principles. For purposes of this paragraph (c), the income of a foreign corporation means the corporation's gross income (or, if the foreign corporation has no gross income, gross receipts) under U.S. tax principles.

(d) *Publicly-traded corporations*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country for any taxable year in which—

(i) Its stock is primarily and regularly traded (as defined in paragraph (d)(3) and (4) of this section) on one or more established securities markets (as defined in paragraph (d)(2) of this

section) in that country, or in the United States, or both; or

(ii) It is wholly-owned (within the meaning of paragraph (d)(5) of this section) by a foreign corporation that is a resident of the same foreign country or a domestic corporation and the stock of such parent corporation is primarily and regularly traded on an established securities market in that foreign country or in the United States, or both.

(2) *Established securities market*—(i) *General rule.* For purposes of section 884, the term "established securities market" means, for any taxable year—

(A) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the country in which the market is located, is the principal exchange in that country, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(B) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. section 78f); and

(C) A domestic over-the-counter market.

(ii) *Exchanges with multiple tiers.* If a principal exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(iii) *Computation of dollar value of stock traded.* For purposes of paragraph (d)(2)(i)(A) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges, located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(iv) *Definition of over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that contain only quotations of such broker or dealer.

(v) *Discretion to determine that exchange qualifies as established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities exchange that does not meet the requirements of paragraph (d)(2)(i)(A) of this section qualifies as an established securities market. Such a determination will be made only if it is established that—

(A) The exchange, in substance, has the attributes of an established securities market (including adequate trading volume, and comparable listing and financial disclosure requirements);

(B) The rules of the exchange ensure active trading of listed stocks; and

(C) The exchange is a member of the International Federation of Stock Exchanges.

(vi) *Discretion to determine that market does not qualify as established securities market.* The Commissioner may, in his sole discretion, determine in a published document that a securities market that meets the requirements of paragraph (d)(2)(i) of this section does not qualify as an established securities market. Such determination shall be made if, in the view of the Commissioner—

(A) The market does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements) or

(B) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(3) *Primarily traded.* For purposes of section 884, stock is "primarily traded" on an established securities market in the country of residence of a foreign corporation or in the United States in any taxable year in which—

(i) One or more classes of stock of the foreign corporation that in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation, are listed on one or more established securities markets in such country or in the United States and each class is regularly traded on one or more established securities markets (within the meaning of paragraph (d)(4) of this section) in such countries; and

(ii) The number of shares in each class of stock described in subdivision (i) of this paragraph (d)(3) that are traded during the taxable year on all established securities markets in the foreign corporation's country of residence or in the United States on which the class is regularly traded exceeds the number of shares in each such class that are traded during that year on established securities markets in any other single foreign country.

(4) *Regularly traded*—(i) *General rule.* For purposes of section 884, a class of stock of a foreign corporation listed during the taxable year on one or more established securities markets in the country of residence of the foreign corporation or in the United States is "regularly traded" on such established securities market or markets in that taxable year if—

(A) Trades in such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or ⅙ of the number of days in a short taxable year or in a portion of a taxable year where relevant under §§ 1.884–4T(b)(8) (i) and (ii)), and

(B) The aggregate number of shares of that class traded on such market or markets during the taxable year is at least 30 percent of the average number of shares outstanding in that class during the taxable year (or at least 10 percent in the case of a foreign corporation that establishes that it has at least 2,500 shareholders of record during the taxable year). In the case of a short taxable year or a portion of a taxable year where relevant under § 1.884–4T(b)(8) (i) or (ii), the applicable percentage shall equal 30 percent or 10 percent, respectively, times the number of days in the short taxable year or in the portion of a taxable year, divided by 365.

(ii) *Closely-held companies not treated as regularly traded.* If, at any time during the taxable year, 100 or fewer persons own 50 percent or more of the outstanding shares of a class of stock, then such class of stock shall not be treated as regularly traded for that year. Persons related within the meaning of section 267(b) shall be treated as one person for purposes of this paragraph (d)(4)(ii). In determining 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). Further, in determining 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).

(iii) *Anti-abuse rule.* Trades between persons described in section 267(b) (as modified in subdivision (ii) of this paragraph (d)(4)) and trades conducted

in order to meet the requirements of this paragraph (d)(4) shall be disregarded. The stock of a foreign corporation will not be treated as regularly traded if there is a pattern of trades designed to meet the requirements of this paragraph (d)(4). For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades designed to meet the requirements of this paragraph (d)(4).

(iv) *Stock traded on domestic established securities markets.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be treated as regularly traded if the stock is regularly quoted by brokers or dealers making a market in the stock. A broker or dealer makes a market in a stock only if the broker or dealer holds himself out to buy or sell the stock at the quoted price.

(5) *Stock treated as wholly-owned.* For purposes of paragraph (d)(1) of this section, stock of a foreign corporation shall be treated as wholly-owned by a corporation (the "parent corporation") if at least 90 percent of the total combined voting power of all classes of stock of such foreign corporation entitled to vote and at least 90 percent of the total value of the stock of such foreign corporation is owned, directly or by application of paragraph (b)(2) of this section, by the parent corporation.

(6) *Burden of proof for publicly-traded corporations.* A foreign corporation that relies on this paragraph (d) to establish that it is a qualified resident of a country with which the United States has an income tax treaty shall have the burden of proving all the facts necessary for the corporation to be treated as a qualified resident, except with respect to paragraph (d)(4)(ii) of this section. With respect to paragraph (d)(4)(ii) of this section, a foreign corporation must maintain a list of shareholders of record, and, on request, shall make available to the district director such list and any other relevant information known to the foreign corporation.

(e) *Active trade or business*—(1) *General rule.* A foreign corporation that is a resident of a foreign country shall be treated as a qualified resident of that country if—

(i) It is engaged in the active conduct of a trade or business (as defined in paragraph (e)(2) of this section) in its country of residence,

(ii) It has a substantial presence (within the meaning of paragraph (e)(3) of this section) in its country of residence, and

(iii)(A) The activities that give rise to the income for which a treaty exemption or rate reduction is claimed constitute part of a U.S. trade or business in which the foreign corporation is engaged (or is deemed to be engaged) and such U.S. trade or business is an integral part (as defined in paragraph (e)(4) of this section) of an active trade or business conducted by the foreign corporation in its country of residence, or

(B) In the case of interest received by the foreign corporation for which a treaty exemption or rate reduction is claimed pursuant to § 1.884–4T(b)(8)(ii), the interest is derived in connection with, or is incidental to, the trade or business described in paragraph (e)(1)(i) of this section.

(2) *Active conduct of a trade or business.* A foreign corporation is engaged in the active conduct of a trade or business only if either—

(i) It is engaged in the active conduct of a trade or business within the meaning of section 367(a)(3) and the regulations thereunder or

(ii) It qualifies as a banking, financing or credit institution under the laws of the foreign country of which it is a resident and it is engaged in the active conduct of a banking, financing, or similar business within the meaning of § 1.864–4(c)(5)(i).

A foreign corporation that is an insurance company within the meaning of § 1.801–3 (a) or (b) is engaged in the active conduct of a trade or business only if it is predominantly engaged in the active conduct of an insurance business within the meaning of section 952(c)(1)(B)(v) and the regulations thereunder.

(3) *Substantial presence test.* A foreign corporation that is engaged in the active conduct of a trade or business in its country of residence has a substantial presence in that country if, for the taxable year, the average of the following three ratios exceeds 25 percent and each ratio is at least equal to 20 percent:

(i) The ratio of assets used or held for use in the active conduct of the foreign corporation's trade or business in its country of residence to the worldwide asset of the foreign corporation,

(ii) The ratio of the gross income from the active conduct of the foreign corporation's trade or business in its country of residence that is derived from sources within such country to the worldwide gross income of the foreign corporation, and

(iii) The ratio of the payroll expenses in the foreign corporation's country of residence to the foreign corporation's worldwide payroll expenses.

(4) *Integral part of an active trade or business in a foreign corporation's country of residence*—(i) *In general.* A U.S. trade or business of a foreign corporation is an integral part of an active trade or business conducted by a foreign corporation in its country of residence if an active trade or business conducted by the foreign corporation in both its country of residence and in the United States comprises, in principal part, complementary and mutually interdependent steps in the United States and its country of residence in the production and sale or lease of goods or in the provision of services. Subject to the presumption in paragraph (e)(4)(ii) of this section, if a U.S. trade or business of a foreign corporation sells goods that are not, in principal part, manufactured, produced, grown or extracted by the foreign corporation in its country of residence, such business shall in no event be treated as an integral part of an active trade or business conducted in the foreign corporation's country of residence if the foreign corporation does not take physical possession of the goods in a warehouse or other storage facility that is located in its country of residence and in which goods of such type are normally stored prior to sale to customers in such country.

(ii) *Presumption if business principally conducted in country of residence.* A U.S. trade or business of a foreign corporation shall be treated as an integral part of an active trade or business of a foreign corporation in its country of residence with respect to the sale or lease of property (or the performance of services) if at least 50 percent of the foreign corporation's worldwide gross income from the sale or lease of property of the type sold in the United States (or from the performance of services of the type performed in the United States) is derived from the sale or lease of such property for consumption, use, or disposition in the foreign corporation's country of residence (or from the performance of such services in the foreign corporation's country of residence). A U.S. trade or business that is engaged in the active conduct of a banking or financial business and makes loans to the public shall be treated as an integral part of an active trade or business of the foreign corporation in its country of residence with respect to loans made to the public if the foreign corporation is engaged in the active conduct of a banking or financial business and makes loans to the general public and at least 50 percent of the principal amount of the foreign corporation's loans are to residents of the foreign corporation's country of residence. In determining whether property or services are of the

same type, a foreign corporation shall follow recognized industry or trade usage or the three-digit major groups (or any narrower classification) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President. The determination of whether income is of the same kind must be made in a consistent manner from year to year.

(f) *Ruling that a foreign corporation is a qualified resident.* In his sole discretion, the Commissioner may rule that—

(i) The establishment or maintenance of a foreign corporation in its country of residence does not have as one of its principal purposes obtaining benefits under the income tax treaty between the United States and the foreign corporation's country of residence, and

(ii) The foreign corporation has substantial business reasons for residing in its country of residence.

In such case, the foreign corporation shall be treated as a qualified resident of its country of residence for the taxable year in which the ruling was obtained and the succeeding two taxable years. If there has been a material change in either the ownership or trade or business of the foreign corporation, the foreign corporation must notify the Secretary within 90 days of such change. The Commissioner will then rule whether the change affects the foreign corporation's status as a qualified resident, and such ruling will be valid for the taxable year in which the ruling was obtained and for the two succeeding taxable years, subject to the requirement in the preceding sentence to notify the Commissioner of a material change.

(g) *Effective date.* This section is effective for taxable years beginning after December 31, 1986.

OMB Control Numbers Under the Paperwork Reduction Act (26 U.S.C. Part 602)

PART 602—[AMENDED]

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4 Section 602.101(c) is amended by inserting in the appropriate place in the table—

"§ 1.884-0T	1545-1070"
"§ 1.884-1T	1545-1070"
"§ 1.884-2T	1545-1070"
"§ 1.884-4T	1545-1070"
"§ 1.884-5T	1545-1070"

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 3, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-19832 Filed 8-29-88; 1:29 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD1-88-076]

Temporary Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final temporary rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is issuing temporary regulations permitting the Route 7 (Belleville Turnpike) drawbridge over the Passaic River, at mile 8.9, to remain closed for 30 days from August 24 through September 23, 1988. This temporary regulation is needed to facilitate necessary rehabilitation and structural repairs of the bridge. This action will relieve the bridge owner of the burden of having to open the draw during the repairs and will only permit marine traffic which can pass under the closed bridge to have access to facilities above the bridge.

EFFECTIVE DATE: This regulation is effective on August 24, 1988 through September 23, 1988.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a Notice of Proposed Rulemaking and delaying its effective date would be contrary to the public interest since immediate action is needed to repair the bridge and the State of New Jersey has awarded a contract to do so.

Drafting Information

The drafters of these regulations are Waverly W. Gregory, Jr., project manager, and CDR R.B. Ellard, project attorney.

Discussion of Temporary Regulations

Current regulations provide that the draw of the bridge shall open on signal at all times. The temporary regulations would allow the bridge to remain in the closed position from 9 a.m. on August 24 through 5 p.m. on September 23, 1988, inclusive. Bridge logs show limited number of openings for commercial and recreation vessels during the past several years.

The deteriorated conditions of the machinery and trunnion bearings, along with a need for replacement of structural members, has necessitated the bridge owner to limit normal bridge angle of opening to only 45 degrees except upon special request of vessel operators. A full opening of the span is to approximately a 70 degree angle.

The Belleville Turnpike (Route 7) bridge provides a vertical clearance of 8 feet above Mean High Water and 13 feet above Mean Low Water in the closed position. This is not adequate for the transit of any commercial vessels using the upstream oil facility, nor can it accommodate the recreational/charter cruiser which occasionally picks up passengers upstream of the bridge during various weekend periods each spring and summer.

The temporary regulation will affect the charter cruise approximately four weekends. The vessel would have to make arrangements to have passengers board downstream of the bridge. The owners were advised during the preliminary investigation and made no objection or comment.

The oil facility upstream of the Belleville Turnpike (Route 7) bridge is engaged in both the wholesale and retail market, which provides and stores home heating oil, diesel fuel and kerosene. During August and September business is slow and facility has indicated that product would be trucked into the facility as needed. Penalty provisions have been made in the construction contract to provide incentive for contractor to complete work on schedule.

Economic Assessment and Certification

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

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This regulation is a temporary inconvenience to the upstream oil facility in that no

petroleum product can be delivered to the facility by marine vessel during the proposed 30 day closure. This temporary inconvenience and loss of service will be offset by the benefit of improved reliability and more efficient openings. Without these repairs and rehabilitation, it is likely that the bridge could experience additional unscheduled failures. An altenative of requiring the bridge to be repaired in the open position, was considered. However, this would result in additional repair costs, possible redesign of repair procedures, rebidding or renegotiating awarded contracts, and extending the time vehicular traffic will have to be rerouted. The contract provides for vehicular traffic to be rerouted for 45 days to expedite repairs. A penalty/incentive clause is included in the contract and will apply during the closure period.

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

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.739(n) is added to read as follows for the period of August 24, 1988 through September 23, 1988. Because this is a temporary rule, the following amendment will not be codified in the Code of Federal Regulations:

§ 117.739 Passaic River.

* * * * *

(n) The draw of the Belleville Turnpike (Route 7) highway bridge, mile 8.9 at Belleville, need not be opened for the passage of vessels from 9 a.m. on August 24, 1988 through 5 p.m. on September 23, 1988, inclusive, to effect major repairs.

Dated: August 24, 1988.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 88–19961 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3433–9]

Approval and Promulgation of State Implementation Plans; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Administrative Rules of South Dakota (ARSD) 74:26 (Air Pollution Control Program). The revisions, which were submitted by the Governor on January 28, 1988, consist of: (1) Updating various citation to the federal regulations in ARSD 74:26; (2) adopting the new ambient air quality standards for particulates (PM_{10}); (3) revising the State administrative procedures for handling permit hearings and contested cases; and (4) correcting deficiencies in the stack height regulations. The South Dakota submittal was received by EPA at about the same time that the court decision on the July 9, 1985 stack height regulations was made. The July 8, 1985 stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The remand is not believed to significantly affect the South Dakota submittal. However, should EPA promulgate revisions to the stack height regulations as a result of the remand, the State has agreed, in a letter dated May 11, 1988, to modify its regulations accordingly. EPA's approval, therefore, is given with this understanding.

DATES: This action will be effective on November 1, 1988, unless notice is received by October 3, 1988, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Houk, Air Programs Branch, Environmental Protection Agency, One Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 294–7613, (FTS) 564–7613.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Governor of South Dakota submitted to EPA certain revisions to its air pollution control regulations, ARSD 74:26. The revisions consisted of updating various citations to the federal regulations in ARSD 74:26, adopting the new ambient air quality standards for particulates (PM_{10}), revising the State administrative procedures for handling permit hearings and contested cases and correcting deficiencies in the stack height regulations. A more detailed discussion of the revision follows below.

Revisions to ARSD 74:26

(1) Chapter 74:26:01—Air Pollution Requirements

The ARSD 74:26:01:12 (standard for the issuance of construction permit) and ARSD 74:26:01:64 (references to *Code of Federal Regulations* (CFR)) were updated to reference the most recent version of the CFR. In addition, ARSD 74:26:01:12 was revised to include several definitions related to stack height (40 CFR 51.100(z) "emission limitations and emission standards"; (ff) "stack"; (gg) "stack in existence"; (jj) "nearby"; (kk) "excessive concentration"; and (nn) "intermittent control systems") previously missing from the State regulations. The ARSD 74:26:01:35 was revised to reflect the earlier adoption of two New Source Performance Standards (NSPS) (40 CFR Part 60, Subparts LL (Metallic Mineral Processing Plants) and OOO (Nonmetallic Mineral Processing Plants)) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Asbestos (40 CFR Part 61, Subpart M). These standards are found in the South Dakota regulations at ARSD 74:26:21 to 74:26:23.

The ARSD 74:26:01:37 was revised to changes the time period in which a person must petition the State Board of Minerals and Environment to contest a recommendation of the State Department of Water and Natural Resources on a permit or variances application. The time period changes from "not less than 30 days nor more than 40 days after publication of the notice" to "within 30 days after publication of the notice". This section

is now consistent with 40 CFR 51.102 and 51.161.

(2) Chapter 74:26:02—Ambient Standards—Episode Criteria

At ARSD 74:26:02:35, the State incorporated by reference to the CFR ambient air quality standards for PM_{10}, as well as associated monitoring methods and requirements (40 CFR 50.6 and Appendix J; 40 CFR 53.1 to 53.4, 53.9, 53.30 to 53.34, and 53.40 to 53.43; 40 CFR 58.1, 58.13, 58.20, 58.23, 58.30, 58.34, 58.35, and Appendices A–G). The State had proposed to simultaneously repeal its total suspended particulate ambient standards, but ultimately chose to retain these standards to protect the enforceability of the existing Total Suspended Particulate (TSP) SIP.

(3) Chapter 74:26:08—NSPS

This chapter of ARSD 74:26 was simplified by deleting the text (which was substantially similar to the Federal regulations) and incorporating the general provisions of 40 CFR Part 60 by reference (Subpart A, 40 CFR 60.1 to 60.18).

(4) Chapters 74:26:09 to 74:26:21, and 74:26:23 (various NSPS)

These chapters of ARSD 74:26 were simplified by deleting the text (which was substantially similar to the Federal regulations) and incorporating the following sections of 40 CFR Part 60 by reference:

Subpart D	40 CFR 60.40 to 60.46
Subpart Da	40 CFR 60.40a to 60.49a
Subpart E	40 CFR 60.50 to 60.54
Subpart F	40 CFR 60.60 to 60.64
Subpart I	40 CFR 60.90 to 60.93
Subpart K	40 CFR 60.110 to 60.113
Subpart O	40 CFR 60.150 to 60.154
Subpart Y	40 CFR 60.250 to 60.254
Subpart DD	40 CFR 60.300 to 60.304
Subpart GG	40 CFR 60.330 to 60.335
Subpart HH	40 CFR 60.340 to 60.344
Subpart Ka	40 CFR 60.110a to 60.115a
Subpart LL	40 CFR 60.380 to 60.386
Subpart OOO	40 CFR 60.670 to 60.676

(5) Chapter 74:26:22—Emission Standards for Asbestos Air Pollutants

This chapter was updated to reference the most recent version of the CFR (40 CFR 61.140 to 61.156).

Issues

EPA Region VIII reviewed and commented on a draft of the revisions to ARSD 74:26 on September 16, 1987. Several of the revisions proposed by the State Department of Water and Natural Resources were not approved by the State Board of Minerals and Environment due to inadequate public notice. Among the revisions not adopted by the Board was an addition to ARSD 74:26:01:31 (conditions for obtaining a variance) which would have prohibited the issuance of variances in a nonattainment area for the pollutant for which the area is in nonattainment. This revision would have brought the State's variance structure in line with section 110(i) of the Clean Air Act, which would permit no less stringent provision. The existing variance provision is one of several deficiencies in the State New Source Review (NSR) regulations for nonattainment areas, which EPA proposed to disapprove on February 25, 1986 (51 FR 6564).

South Dakota has one area designated as nonattainment (Rapid City, for TSP). With the repeal of the Federal TSP standard on July 1, 1987 (52 FR 24634), certain NSR requirements will no longer apply in the Rapid City area. However, until the State PM_{10} SIP is approved and the TSP nonattainment area is redesignated, the nonattainment area NSR requirements (including the offset provisions) in the existing South Dakota SIP still apply. (The existing South Dakota NSR regulations were approved on November 3, 1981 (46 FR 54541).) The State is required to submit adequate NSR regulations as part of its PM_{10} SIP, which the State is in the process of developing. The variance provision (as well as the other NSR program deficiencies) must be addressed before the PM_{10} SIP can be approved by EPA.

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

(1) Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

(2) Dispersion credit for sources originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

(3) Grandfathering pre-1979 use of the refined H+1.5L formula (40 CFR 51.100(ii)(2)).

Although EPA generally approves the State's stack height rules on the grounds that they satisfy 40 CFR Part 51, EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). If EPA's response to the *NRDC* remand modifies the July 8, 1985 regulations, EPA will notify the State that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by the State and source owners or operators. The State, in a letter dated May 11, 1988, has agreed to make such changes to its regulations as appropriate if the July 8, 1985 stack height regulations are modified. In addition, EPA is interpreting this commitment as an agreement to reevaluate any affected permits for conformance to any revisions to the regulations. The State agrees with this interpretation, as confirmed in a telephone conversation on July 11, 1988.

Adequacy of State Submittal

As received by EPA, the January 28, 1988 submittal was lacking several elements necessary for EPA review and processing. Missing elements included:

(1) Evidence that the State has actually adopted the revisions to the State regulations (i.e., a copy of the revised regulations signed and dated by the appropriate State official).

(2) Evidence of adequate opportunity for public participation:

(a) A copy of the notice of public hearing, including certification of the date it was published and verification that adequate public notice was provided to affected parties;

(b) Certification of the date, time, and place at which the public hearing was held; and

(c) Any public comments, and the State's responses to them.

(3) A specific listing of what revisions were made.

These additional materials were submitted by the State on February 26, 1988.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective November 1, 1988.

Final Action

EPA hereby approves the revisions to ARSD 74:26 as part of the South Dakota SIP. As stated earlier, the EPA approval of the stack height regulations in ARSD

74:26 is given with the understanding that the State will revise as necessary its regulations to comply with Federal requirements after the decision in the *NRDC* v. *Thomas* remand is made. Today's action approves revisions to the existing NSR program.

EPA finds good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

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.)

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

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, Particulate matter, Sulfur oxides, Incorporation by reference.

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

Date: August 18, 1988.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart QQ—South Dakota

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2170 is amended by adding paragraph (c)(11) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(11) On January 28, 1988, the Governor submitted a plan revision (1) updating citations to Federal regulations in the South Dakota air pollution control regulations (Administrative Rules of South Dakota 74:26), (2) adopting new ambient air quality standards for particulates (PM_{10}), (3) revising the State administrative procedures for handling permit hearings and contested cases, and (4) correcting deficiencies in the stack height regulations.

(i) Incorporation by reference

(A) Revisions to the Administrative Rules of South Dakota (ARSD) 74:26:01:12, ARSD 74:26:01:35, ARSD 74:26:01:37, ARSD 74:26:01:64, ARSD 74:26:08 through ARSD 74:26:23, inclusive, and addition of a new section, ARSD 74:26:02:35, were revised through November 24, 1987.

3. Add a new § 52.2180.

§ 52.2180 Stack height regulations.

The State of South Dakota has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 11, 1988, Joel C. Smith, Administrator, Office of Air Quality and Solid Waste, stated:

"* * * We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modifies the July 8, 1985 regulations, EPA will notify the State of the rules that must be changed to comport with the EPA's modified requirements. The State of South Dakota agrees to make the appropriate changes."

[FR Doc. 88–19165 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3436–7]

40 CFR Parts 260, 264, 265, and 270

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today providing an interpretation of certain terms and provisions, and correcting typographical and other errors, that originally appeared in the revised final standards for hazardous waste tank systems (51 FR 25422, July 14, 1986). These interpretations and amendments are being made in response to litigation and numerous inquiries that the Agency has received on certain aspects of the final rule.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, (800) 424-9346 (in Washington, DC, call (202) 382–3000)), or William J. Kline, (202) 382–7917, Office of Solid Waste (OS–322), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion of Issues Requiring Interpretation
A. Scope of the Exemptions for Wastewater Treatment/Elementary Neutralization Tank Systems
1. Effect of Revised Tank System Standards on Wastewater Treatment/Elementary Neutralization Units
2. Clarification of "Wastewater Treatment Unit"
B. Issues Regarding the Secondary Containment Requirements
1. Welded Flanges
2. Applicability of Exemption for Certain Types of Joints and Connections
a. Plastic Piping Connections
b. Tubing Connections
i. Soldered and Brazed Joints
ii. Compression Fittings
iii. Flared-Fitting Joints
3. Exemption of Aboveground Sealless Valves
4. Extent of Required Leak Detection
5. Requirements for Concrete Liners
6. Secondary Containment of Pressurized Piping with Automatic Shut-off Devices
C. Application of Immediate Response Exemption to Sumps
III. Correction of Typographical Errors
IV. Compliance with Administrative Procedure Act Requirements

I. Background

On July 14, 1986, EPA issued a final rule that revised the standards for hazardous waste storage and treatment tank systems (51 FR 25422). Since then, the Agency has received requests for interpretation of a number of terms or provisions of the final rule, and has found several typographical errors in the rule. In addition, the revised tank system standards were challenged by industry petitioners in *Edison Electric Institute (EEI), et al.* v. *U.S. EPA*, No. 86–1549 (D.C. Circuit). This notice provides additional interpretation and clarification of the final rule, both in response to public inquiry and in settlement of the *EEI* litigation. This notice also corrects a number of typographical errors.

II. Discussion of Issues Requiring Interpretation

Three major areas of the final rule require further clarification: (1) The exemptions for wastewater treatment systems and elementary neutralization tank systems, (2) issues concerning secondary containment requirements, and (3) the applicability of the immediate response exemption under 40 CFR 265.1(c)(11) and 270.1(c)(3).

A. Scope of the Exemptions for Wastewater Treatment/Elementary Neutralization Tank Systems

1. Effect of Revised Tank System Standards on Wastewater Treatment/Elementary Neutralization Units

On November 17, 1980, EPA promulgated an amendment to the hazardous waste standards that suspended applicability of the requirements in 40 CFR Parts 122 (now codified in Part 270), 264, and 265 to owners and operators of wastewater treatment tanks and elementary neutralization tanks (45 FR 76074).

In the July 14, 1986, revised standards for hazardous waste tank systems (51 FR 25422), the Agency, in response to evidence indicating a high incidence of failures in piping and other equipment ancillary to tanks, made a special effort to focus on the proper management of such equipment. Thus, all equipment that is ancillary to the tank and used "to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal on-site, or to a point of shipment for disposal off-site" was made subject to the revised standards (see definition of "ancillary equipment", 40 CFR 260.10). EPA used the term "tank system" to emphasize that both the tank and its ancillary equipment must be managed in accordance with the revised standards. EPA has received several inquiries regarding the extent to which the term "tank system" might result in previously exempt wastewater treatment/neutralization tanks being regulated by the revised hazardous waste tank system standards.

In the July 14, 1986, rulemaking, the Agency had no intention of altering the scope of the November 17, 1980, exemption for such units as provided under 40 CFR 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v) by subjecting the ancillary equipment of such exempt tanks to regulation. EPA attempted to make this point clear in the preamble of the revised standards (see 51 FR 25462). However, numerous parties believe the preamble language is still ambiguous. This ambiguity was also an issue in the *EEI* litigation. To add to the confusion of the status of these exemptions, EPA inadvertently neglected to amend the 40 CFR 260.10 definitions of "elementary neutralization unit" and "wastewater treatment unit" to reflect the Agency's intent to address hazardous waste tank systems, rather than simply hazardous waste tanks. In this notice, EPA corrects this oversight.

In order to remove any remaining ambiguity over this issue, EPA is today amending the wastewater treatment and elementary neutralization unit definitions to clarify that the exemptions apply to the tank systems, not just the tank. The only additional equipment intended to be covered under the revised standards was ancillary equipment that is associated with a regulated hazardous waste storage or treatment tank.

Thus, if a wastewater treatment or elementary neutralization unit is not subject to the RCRA Subtitle C hazardous waste management standards, the ancillary equipment connected to the exempted unit is likewise not subject to the Subtitle C standards. Similarly, the exemptions apply to sumps that meet the definition of a tank in 40 CFR 260.10 and that are used for the purpose of conveying hazardous wastewater to an exempted wastewater treatment or elementary neutralization unit (including conveyance by way of intermediate sumps, tanks, and holding ponds) since such sumps are ancillary equipment to the exempted tanks. Also, the revised hazardous waste tank system standards do not apply to ancillary equipment that is associated with hazardous waste management units other than storage or treatment tanks (*e.g.*, surface impoundments).

2. Clarification of "Wastewater Treatment Unit"

One of the conditions under 40 CFR 260.10 for qualifying as a wastewater treatment unit is that the unit must be part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act. EPA has received numerous inquiries regarding the meaning of the term "wastewater treatment facility."

Based on EPA's property-boundary interpretation of the term "facility" under RCRA and the purpose of the exemption, which is to exclude tank systems subject to regulation under the Clean Water Act, it is EPA's position that in order for a wastewater treatment unit to be covered by the exemption, it must be part of an on-site wastewater treatment facility. Accordingly, any hazardous waste tank system that is used to store or treat the wastewater that is managed at an on-site wastewater treatment facility with an National Pollution Discharge Elimination System (NPDES) permit or that discharges to a Publicly Owned Treatment Works (POTW), is exempt from the RCRA regulations. Whether the wastewater is conveyed from the tank system directly to the treatment unit or indirectly by way of intermediate sumps, tanks or holding ponds does not affect the applicability of the exemption. For example, this exemption would apply if a sump is used to collect the rinse from periodic cleaning of utility boilers and this wastewater is then conveyed to a wastewater treatment unit at the same facility. Also, the means of conveyance of the waste between storage and treatment does not affect the applicability of this exemption. The applicability of the exemption does not depend on whether the wastewater is piped or trucked, or conveyed in any other manner to the wastewater treatment facility within the boundaries of the facility generating the wastewater. Likewise, the applicability of the exemption does not depend on whether the on-site wastewater treatment facility also treats wastewater generated off-site.

However, any tank system that was employed in managing wastewater at a facility prior to its off-site transfer to another location, whether or not the off-site location includes an NPDES permitted wastewater treatment facility, or a facility that discharges to a POTW sewer system, is not covered by this exemption.

EPA intends that this exemption apply to any tank system that manages hazardous wastewater and is dedicated for use with an on-site wastewater treatment facility. However, if a tank system, in addition to being used in conjunction with an on-site wastewater treatment facility, is used on a routine or occasional basis to store or treat a hazardous wastewater prior to shipment off-site for treatment, storage, or disposal, it is not covered by this exemption. Unless the tank system otherwise qualifies for some other exemption, it would be subject to the revised standards for hazardous waste tank systems.

A final clarification of this exemption concerns an on-site wastewater treatment facility that has no discharge to surface water. As previously stated in 45 FR 76078 (November 17, 1980), the wastewater treatment unit exemption is intended to cover only tank systems that are part of a wastewater treatment facility that (1) produces a treated wastewater effluent which is discharged into surface waters or into a POTW sewer system and therefore is subject to the NPDES or pretreatment requirements of the Clean Water Act, or (2) produces no treated wastewater effluent as a direct result of such requirements. This exemption is not intended to apply to wastewater

treatment units that are not required to obtain an NPDES permit because they do not discharge treated effluent.

B. Issues Regarding Secondary Containment Requirements

The Agency has also received numerous requests for interpretation of the regulatory provisions concerning the secondary containment requirements. The areas of confusion include; the meaning of welded flanges, the exemption for certain types of joints and connections, the exemption of above-ground sealless valves, the extent of required leak detection for concrete liners, and the secondary containment of pressurized piping with automatic shut-off devices.

1. Welded Flanges

The primary purpose of a flange is to enable connection of piping to vessels, pumps, valves, and other equipment. A flange connection provides an easy means of removing equipment from the pipe system for inspection, maintenance, repair, or replacement. Like other piping connections, flanges can be joined to piping by two basic techniques: threaded joints or metallurgical bonds (e.g., welds). If a piece of equipment is connected to piping by a threaded joint, it may be difficult to remove the equipment without disassembly of a portion of the piping system or without loosening other pipe-threaded connections. If the equipment is welded to the pipe, the pipe must be cut to remove the equipment. In contrast, equipment joined together with flanged connections can be easily removed by unbolting the flanges.

In §§ 264.193(f) and 265.193(f) of the revised hazardous waste tank system standards, EPA exempted welded flanges from the requirement to have secondary containment as long as the flanges were visually inspected on a daily basis. Numerous questions have been raised as to the intended meaning of the term "welded flange" because EPA did not define this term in the July 14, 1986, final rules. Apparently, several different meanings can be attributed to the term.

A term typically used in national piping codes, "welded flange" refers to welding only the piping to the flange. The flange-to-flange seal is achieved by mechanical seals, such as gaskets and o-rings. The flanges are usually held together by bolts. For a perfect seal, the bolt holes would have to be eliminated, and a circumferential weld made at the flange-to-flange joint. However, EPA is not aware of any national standards or codes that discuss this type of weld. And, most important, such a weld would defeat the purpose of the flange—i.e., to allow easy coupling and uncoupling of equipment from the piping system.

In exempting welded flanges from secondary containment, EPA intended to discourage the use of threaded joints, which EPA believes are susceptible to more frequent and larger quantities of releases than welded flanges. Threaded joints are used in metals where the walls are thick enough to withstand considerable pressure and corrosion after reduction in thickness due to threading. Threading is not a precise machining operation, and filler materials such as "pipe dope" are necessary to block the spiral leakage path.

Several characteristics of threaded joints make them more susceptible to leakage than welded flanges. Threads notch the pipe and reduce its strength and fatigue resistance. Enlargement and contraction of the flow passage at threaded joints creates turbulence. Thus, corrosion and erosion may be aggravated at the point where a pipe has already been thinned by threading. The tendency of pipe wrenches to crush pipes and fittings limits the torque available for tightening threaded joints thereby possibly excluding the necessary amount of tightening. For low-pressure systems, a slight rotation in the joint may be used to impart flexibility to the system, but this same rotation may cause leaks to develop in higher-pressure systems. In some metals, galling (i.e., a wearing down) occurs when threaded joints are disassembled.

Flanged joints come in a wide variety of types and facings. Welded-neck flanges provide joints as strong as the pipe under all types of static and cyclic loading. Slip-on, socket-weld, and lap-joint flanges provide joints as strong as the pipe under static loading but have lower resistance to cyclic stresses.

EPA realizes that flanged connections cannot be considered equivalent to an all-welded pipe system without flanges and will, therefore, pose a potential leak source. However, welded flanges eliminate, in EPA's opinion, the point of most probable leakage—i.e., the threaded pipe connection to the flange. With respect to potential leakage, flanges are superior to threaded connections because of the higher quality and more consistent workmanship and supervision associated with flange assembly and because of the inherent problems with threaded joints discussed above. While the flange-to-flange seals can leak, the occurrence of leakage from flanges is much lower than from threaded joints due to the larger seal surface area for the flange joint (a large surface on flange face versus a few sealing threads in the threaded connection). Also, with proper selection of bolt materials and washers, the mechanical seal can be kept under continuous compressive force, whereas the threaded joint relies on thread sealing compound to compensate for the contraction and expansion of the threaded joint. In any case, if a leak does occur in the mechanical seal it can be easily detected visually and corrected immediately.

Weld-neck and lap-joint flanges are preferable to socket-weld and slip-on flanges because they provide the greatest resistance to static stress. Socket-weld and slip-on flanges provide a lesser degree of structural integrity because the welds may eventually weaken, particularly from cyclical stress (vibration, hammering, opening/closing of valves, etc.). Nevertheless, EPA believes that any of these welded flanges, if properly specified, installed, inspected, and maintained in accordance with American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), and other piping component standards, and if properly managed in compliance with the revised hazardous waste tank system standards (e.g., compatibility, design certification, installation certification, inspections, and response to leak/spills), should pose a very low risk of leakage. For example, a properly designed piping system should take cyclical loading into account and use pulsation dampers, flex joints, expansion joints, etc., to eliminate or substantially minimize the effect of cyclical stresses. Thus, as specified on the revised tank system rules, the Agency believes secondary containment is not necessary for aboveground welded flanges (i.e., welded at the joint of the pipe to the flange) that are visually inspected on a daily basis. For the purpose of §§ 264.193(f) and 265.193(f) EPA interprets the term "Welded flange" to mean weld-neck, lap-joint, slip-on, and socket-weld flanges.

2. Applicability of Exemption for Certain Types of Joints and Connections

Since promulgation of the revised tank system standards, EPA has received numerous inquiries regarding the intended scope of the exemption from secondary containment for welded joints and welded connections. For example, inquirers have requested clarification on the applicability of this exemption to plastic piping connections, and compression, soldered/brazed and other tubing connections.

A wide diversity of joints/connections can be used in the construction of a hazardous waste tank system. Considering the broad spectrum of reliability that can be expected of the joint/ connection, given such variables as material of construction, method of joining, quality control of joint/ connection assembly, etc., the issue is which types of joints/connections are sufficiently "welded" so as to be exempt from the requirement of secondary containment.

In general, and as previously discussed, one of EPA's main concerns lies with threaded fittings and joints. As explained below, fittings and joints that avoid the inherent problems associated with threaded fittings and joints, and that thereby provide a more reliable connection, are the types of fittings and joints most likely to be considered "welded" (that is to say, permanently joined in such a fashion as to be comparable to welding in reliability) and thus eligible for exemption from the secondary containment requirement. This exemption is only applicable to aboveground piping systems that are visually inspected on a daily basis.

a. *Plastic piping connections.* Plastic pipe and fittings may be joined by a solvent-cement, by heat fusion, or by a mechanical device such as threads or a ring seal. A brief description of each type of joint is given below:

- Solvent cement softens the surfaces of the components, which then solidify as the solvent evaporates.
- With heat fusion, the surfaces are heated with special tools until they have softened. When engaged, the softened surfaces flow together, forming a joint as the material cools. There are three basic types of heat-fused joints: butt fused, socket or insert fused, and saddle fused.
- Mechanical means or devices can be used to develop a pressure seal. Types of mechanical joints include threaded joint, compression gasket joint, compression fitting joint, clamped insert-fitting joint, bell-and-spigot gasket or push-on joint, flanged joint, and flare joint.

Of all the joining techniques, solvent-cementing and heat fusion can be considered equivalent to welding in metal pipe systems. In both cases, the plastic is melted or "welded" together. The choice of the particular bonding depends on the type of plastic. Polyvinylchloride (PVC) and chlorinated polyvinylchloride (CVPC) pipes are solvent cemented, but polyvinylidene fluoride (PVDF) and polypropylene (PP) pipes require heat fusion, since they are not susceptible to solvent cementing. As with all joining techniques, the leak characteristics depend on the quality of workmanship involved. If the plastic components are properly joined, the risk of leakage should be the same as that of welded pipe.

According to ASTM standards, the pressure rating of solvent-cemented joints, properly fabricated, is equivalent to the pressure rating for the original pipe, after a reasonable time has been allowed for the joint to cure. The pressure rating of well-made, heat-fused joints is the same as the pressure rating for the original pipe after the material in the joint has cooled to the pipe temperature.

However, EPA notes that care must be taken in the selection and application of a particular plastic pipe. The pipe must be suitable for the internal fluid and the external conditions. For example, some pipes may need to be wrapped to prevent stress cracking from ultraviolet light.

Flared-tube joints, insert fittings, and threaded joints are not as reliable as heat fusion and solvent-cement joining techniques and have a greater incidence of leaks than do the welded pipes. Of these, threaded joints have the greatest likelihood of leaking, insert fittings the next greatest, and flared-tube joints the least likelihood of the three.

Depending on the type of material and/or the manufacturer, certain joining devices may lower the maximum pressure rating of the piping system. Typically, threaded and mechanical joints of particular plastics may lower the maximum pressure rating (of the pipe joined) by as much as 50 percent.

Given this information, EPA is convinced that solvent-cemented and heat-fused connections in plastic piping systems are analogous to welded metallic connections and should thus be considered "welded" for purposes of the exemption from secondary containment requirements under 40 CFR 264.193 and 265.193. Mechanical joints, however, would need secondary containment.

The methods used to join plastic pipes and fittings depend on the type of plastic(s) being joined. Applicable ASTM practices should be consulted to ensure that the method used is compatible with the materials being joined. In addition, the recommendations of the manufacturer should be considered when determining which method and the details of the procedure to be used.

The ASTM standards provide specifications, test methods, practices, and guides for plastic pipes and fittings made from these plastics. Plastic pipes and fittings made from several other types of plastic—most notably polypropylene (PP) and poly(vinylidene fluoride)(PVDF)—are commonly available in a wide variety of sizes. However, they are not covered as such by ASTM specifications.

b. *Tubing connections.* Since promulgation of the revised standards for hazardous waste tank systems, the Agency has received numerous questions concerning the equivalence of tubing components to all-welded piping. These components, used in making connections to valves, instruments, pressure gauges, and other ancillary devices, employ soldered and brazed joints, compression-fittings, and flared-fitting joints.

EPA does not have sufficient information to determine that these types of connections are equivalent to "welding" and thus is not exempting these connections from the requirement of secondary containment. The Agency believes that further consideration of an exemption for these connections is necessary and welcomes any data that addresses the reliability of these connections.

i. *Soldered and brazed joints.* Soldering is a metal-joining process wherein a nonferrous alloy is heated to a suitable temperature and fused to the metals being joined. The filler metal (solder) is distributed between closely fitted surfaces of the joint by capillary attraction. In general, solders are lead-tin alloys and may contain antimony, bismuth, and other elements.

Soldered joints are most widely used in pipe or tubing sizes 2 inches and smaller where the heat requirements are less burdensome. Properly made, the joints are completely impervious. Soldered joints should not be used in areas where plant fires are likely because exposure to fire rapidly and completely melts the joints. Nor should they be used where the pipe contains flammable or toxic fluids or where the piping is subject to thermal shock or mechanical vibrations.

Brazing is a metal-joining process wherein a nonferrous metal is heated to a suitable temperature and fused to the metals being joined. The filler metal is distributed between the closely fitted surfaces of the joint by capillary attraction.

Silver-brazed joints are similar to soldered joints, except they require a temperature of about 1100°F for fusion to occur. Silver-brazed joints are used where temperature or the combination of temperature and pressure is beyond the range of soldered joints. They are also more reliable in the event of plant fires and are more resistant to vibration.

Braze welding is a welding process using a nonferrous filler metal having a melting point below that of the base

metals, but above 800 °F (427 °C). The filler metal is not distributed in the joint by capillary attraction.

EPA believes that soldered and brazed fittings are not equivalent to welded piping. Regardless of how well these joints are made, they will continue to be a greater source of leakage than a welded connection, which has the strength of the pipe itself. However, if installed properly and within their design limitations, EPA believes that these joints have a very low risk of leakage. If a leak does occur, it should be visually detected in most circumstances, and tubing normally has a piping take-off valve for isolation. Tubing also generally has small bores so leaks will normally be minor, except in high-pressure service.

Although the Agency acknowledges that these types of connections are somewhat less reliable than a welded connection, EPA believes that the combination of a relatively low risk of leakage, the required compliance with standards for proper design, installation, and inspection, and the impracticality of designing secondary containment for such connections may make a reasonable case for exempting these connections from the requirement for secondary containment. The Agency is continuing to study this issue and may amend the regulations in the future to provide such an exemption for these connections.

ii. *Compression Fittings.* A compression fitting can be an integral part of a tank system component (e.g., the fitting is built into the valve or pressure gauge), or it can be a separate piece that is threaded to the component. These fittings are used where the tubing has too high a ratio of wall thickness to diameter for flaring or where the tubing lacks sufficient ductility for flaring. The seal is made by a ferrule ring that is slipped over the end of the tube and compressed onto the tube by a compression nut on the fitting. The ferrule ring has two sealing surfaces: a smooth-bore inner-diameter surface that is compressed onto the tube surface, and a smooth conical-shaped outer-diameter surface that makes a metal-to-metal seal to a matching machined-cone surface in the body or housing of the compression fitting. The sleeve must be considerably harder than the tubing, yet still ductile enough to be diametrically compressed. It also must be as resistant as the tubing to corrosion by the fluid handled. Because the ferrule is under great compression force, a very tight seal is obtained. This force is usually sufficient to overcome differences in coefficients of thermal expansion of the materials used for the tube and fitting, normal vibration, and other factors that would cause threaded joints to leak.

Properly designed and manufactured compression fittings rarely leak. They are used in highly critical applications, such as connections for fuel lines and hydraulic systems on aircraft. Flareless compression fittings are used extensively and can be designed for systems up to 60,000 pounds per square inch gauge (psig). The ANSI B31.3 Code lists no restrictions for compression fittings, except that they be safeguarded if used in severe cyclic conditions. Leaks, when they occur, are usually attributed to one of the following causes:

—Dirt or debris trapped on the sealing surface;

—Improper torqueing (too loose or over-tightening);

—Wear or scoring from excessive removal and reinstallation of the connection;

—Damage from handling during installation or removal; or

—Excessive vibrations or bending moments at the tube-to-fitting interface.

EPA believes that compression fittings used on metallic tubing may be nearly as reliable as welded connections. EPA is considering amending the rules to exempt metal tubing that uses compression fittings (but not with a threaded connection between the fitting and device) from the secondary containment requirement.

The Agency is convinced, however, that secondary containment should be required for plastic piping connections that use compression fittings. Although plastic piping can be joined in a manner similar to compression fittings for metal piping, the technique is substantially different. Since metals are ductile, the ferrule metal seal and the tubing are both actually compressed by the compression nut. On the other hand, plastics are not as ductile or as strong as metals, and a seal is made by the much lower compressive force of an elastomer sealing ring. Thus, EPA does not believe that these plastic systems afford sealing equivalent to that of solvent-cemented or fused joints.

iii. *Flared-fitting joints.* Flared-fitting joints are used for ductile tubing in cases where the ratio of wall thickness to the diameter is small enough to permit flaring without cracking the inside surface. The tubing must have a smooth interior surface. A flared fitting that employs a sleeve avoids torsional strain on the tubing and minimizes vibration fatigue on the flared portion of the tubing. More labor is required for assembly, but it is more resistant to temperature cycling than other tubing fittings and is unlikely to be damaged by over-tightening. For these fittings, less control of tube diameter is required.

The Agency believes that flared-fitting joints, although not as reliable as compression fittings, still present a low risk of leakage. However, given the lack of available data on the reliability of flared-fitting joints, EPA is unable at this time to determine whether these joints should be exempted from the requirement of secondary containment. The Agency may consider this issue in a future rulemaking.

3. Exemption of Aboveground Sealless Valves

As previously discussed, 40 CFR 264.193 and 265.193 of the final rule exempt certain aboveground piping system components from the secondary containment requirement. EPA has received several inquiries regarding an apparent inconsistency between the discussion of these exemptions in the preamble (51 FR 25450, July 14, 1986) and the list of exemptions codified in 40 CFR 264.193(f)(1)–(4) and 265.193(f)(1)–(4) (51 FR 25475 and 25481). Sealless pumps are exempted under §§ 264.193(f) and 265.193(f) because they do not use traditional packing materials, which are a common source of leakage. Similarly, the Agency intended to exempt sealless valves, as mentioned in the preamble discussion, provided that a welded connection is used to join the sealless valve to the piping. However, the regulatory exemption refers to sealless pumps, but not sealless valves. Thus, today EPA is correcting its omission of sealless valves from the regulatory language of 40 CFR 264.193(f)(3) and 265.193(f)(3) by adding sealless valves to the list of piping components that need not be provided with secondary containment.

4. Extent of Required Leak Detection.

Sections 264.193(b) and 265.193(b) set out the performance standards for secondary containment systems. Additional details on how to meet these performance standards are found in §§ 264.193(c) and 265.193(c). EPA has received several inquiries regarding the intent of the wording in 40 CFR 264.193(c)(3) and 265.193(c)(3) which states that secondary containment systems must be:

> Provided with a leak-detection system that is designed and operated so that it will detect the failure of either the primary or secondary containment structure or the presence of any release of hazardous waste or accumulated liquid in the secondary containment system within 24 hours * * *.

Numerous inquirers took this provision to mean that the Agency was intending that a leak detection capability be provided both within, and external to, the secondary containment structure. Several other inquirers requested clarification of whether the Agency requires detection of failure of either the primary or secondary containment structures or the presence of any release, or both.

Under this provision, EPA intended that the leak detection component of a secondary containment system promptly detect any release from the primary structure into the secondary containment structure. EPA used the wording, "Provided with a leak detection system that is designed and operated so that it will detect failure of either the primary or secondary containment structure", to ensure that double-walled tanks which detect failure of either the primary or the secondary containment structure (e.g., via loss of pressure in the interstitial space between the two walls) meet the requirements of §§ 264.193(b) and 265.193(b). This provision should not be interpreted to require leak detection outside of the secondary containment structure in order to detect failure of the secondary containment structure.

5. Requirements for Concrete Liners

In 40 CFR 264.193(e) (1) and (2), and 265.193(e) (1) and (2), EPA promulgated standards applicable to external liners and vault systems. The external liner requirements of 40 CFR 264.193(e)(1) and 265.193(e)(1) address the subject of liners generically. For example, they do not differentiate between synthetic membrane liners and concrete. On the other hand, the requirements for vault systems under 40 CFR 264.193(e)(2) and 265.193(e)(2) are applicable only to concrete.

However, EPA did not intend that concrete used, for example, as a base and diking material for secondary containment of an aboveground tank or onground tank should be subject to requirements significantly different from concrete that is used in the construction of a secondary containment vault. Certain of the requirements promulgated for concrete vaults are appropriate and are intended to be applied to situations where concrete is used in the construction of any secondary containment structures. Thus, concrete liner systems must also meet the more specific requirements of 40 CFR 264.193(e)(2) (iii) and (iv) and 265.193(e)(2) (iii) and (iv) in order to meet the general performance standards under 40 CFR 264.193(e)(1) (iii) and (iv) and 265.193(e)(1) (iii) and (iv), which specify that the liner system be free of cracks or gaps and designed to prevent migration of the waste. Chemical-resistant water stops at all joints, as specified in 40 CFR 264.193(e)(2)(iii) and 265.193(e)(2)(iii) are appropriate for any concrete structure serving as a secondary containment device. Likewise, given the relative permeability of concrete, the Agency believes that most secondary containment concrete structures, vaults or otherwise, will require an impermeable coating or lining that will prevent migration of waste into the concrete as specified in 40 CFR 264.193(e)(2)(iv) and 265.193(e)(2)(iv). Such coating or lining must also be compatible with the waste(s) managed within the secondary containment structure.

6. Secondary Containment of Pressurized Piping with Automatic Shut-Off Devices.

EPA has received a number of questions regarding the exemption from secondary containment of pressurized piping with automatic shut-off devices.

Under 40 CFR 264.193(f)(4) and 265.193(f)(4), aboveground pressurized piping systems with automatic shutoff devices that are visually inspected on a daily basis are exempt from the secondary containment requirement. Furthermore, this provision allows this exemption even if welded flanges, welded joints, welded connections, sealless valves, and sealless or magnetic coupling pumps are not used. However, the Agency is reconsidering this exemption. EPA may have over-estimated the effectiveness of automatic shut-off devices. Although these devices should certainly limit the quantity of waste released in case of a substantial failure somewhere in the piping system (e.g., pipe rupture), they would be unlikely to have any effect on reducing the number or size of releases in piping systems due to small or slow leaks at valves, connections, flanges, etc.

It was not EPA's intent to prescribe less importance to small leaks in pressurized piping systems. In fact, such less-than-major leaks would be of greater concern in pressurized piping systems compared to nonpressurized systems due to the potential to release larger quantities of hazardous waste.

Thus, the Agency believes that it may be prudent to require all aboveground piping systems, pressurized as well as nonpressurized, and even with automatic shut-off devices, to use welded joints, sealless valves, sealless or magnetic coupling pumps, etc., in order to be exempted from the secondary containment requirement. In fact, automatic shut-off devices may also need to be welded so as not to be a source of leakage. Using this approach, automatic shut-off devices might be used to protect against catastrophic releases and serve as a means to limit the size of the secondary containment system(s), where needed, rather than serve as a means for the entire piping system to be exempted from secondary containment. EPA is considering proposing such an amendment to the tank system standards in the near future.

C. Extent of Cathodic Protection for Primary Tanks

EPA received several inquiries regarding the intent of the 40 CFR 264.193(e)(3)(ii) and 265.193(e)(3)(ii). That regulation specifies double-walled tanks must be "protected, if constructed of metal, from both corrosion of the primary tank interior and of the external surface of the outer shell * * *." Apparently, this wording has been interpreted to mean that cathodic protection must be provided for the interior surface of the primary tank. This was not EPA's intent.

With respect to the interior of the primary tank, this requirement was chiefly intended to address the excessive or accelerated corrosion of the primary tank's interior surface resulting from incompatibility between the tank construction material and the stored waste(s). This provision thus reiterates the requirement found elsewhere in the standards (e.g., 40 CFR 264.191(b), 264.192(a)), that accelerated corrosion of the primary tank's interior surfaces must be prevented. However, this provision does not mandate cathodic protection of the interior surface of primary tank structures.

D. Application of the Immediate Response Exemption to Sumps

As part of the settlement of the *EEI* litigation, EPA agreed to clarify the applicability of the immediate response exemption under 40 CFR 264.1(g)(8) and 265.1(c)(11) to sumps. The July 14, 1986, final rule discussed three types of sumps that may be regulated as tanks under this revised rule: "temporary tanks," secondary containment sumps, and primary containment tanks. With respect to temporary tanks, i.e., tanks used for storage of waste in response to a leak or spill, and other temporary, unplanned occurrences, the Agency stated that no Subpart J standards were applicable since such storage was exempted from these regulatory requirements under 40 CFR 264.1(g)(8) and 265.1(c)(11) (51 FR 25445). Those sections (along with 40 CFR 270.1(c)(3))

exempt any person from permitting requirements and regulatory standards for "treatment or containment activities taken during immediate response to * * * [a] discharge of a hazardous waste", except requirements concerning preparedness and emergency procedures. The purpose of the exemption is to allow appropriate immediate response to hazardous waste discharges in emergency situations where treatment or storage is necessary but the facility owner or operator would not have had sufficient previous warning to comply with regulatory standards or obtain a RCRA permit for such treatment or storage (51 FR 25445, July 14, 1986); (48 FR 2509, January 19, 1983). A sump that may be used to collect hazardous waste in the event of a spill, whether accidental or intentional, and that is not designed to serve as a secondary containment structure for a tank storing hazardous waste, is generally exempt from regulatory and permitting requirements so long as it is used to contain hazardous waste only as an immediate response to such a spill.

Sumps that serve as part of a secondary containment system, i.e., to collect spills from a primary containment vessel storing hazardous waste, are subject to all applicable requirements for tank systems except for the requirement to obtain secondary containment. (51 FR 25441, July 14, 1986). In contrast to "temporary tanks", secondary containment sumps and all other secondary containment structures, are specifically designed to serve as the collection device for spills of hazardous waste from an adjacent primary containment vessel.

Finally, except as noted in section II.A. above, sumps that store hazardous waste as primary containment vessels are subject to all tank system requirements, including the requirement to obtain secondary containment (or a variance). Primary containment sumps are sumps designed to collect and transport routine and systematic discharges of hazardous waste (51 FR 25441, July 14, 1986). Sumps designed to serve as the storage for hazardous waste from periodic cleaning of utility boilers, for example, are primary containment vessels, although as explained above they will still qualify for an exemption from the tank system requirements if they are used as ancillary equipment to an exempted wastewater treatment or elementary neutralization unit. See Section II.A. *supra.*

In short, upon consideration of 40 CFR 264.1(g)(8) and 265.1(c)(11) and the interrelationship of these provisions with the July 14, 1986 final rule, EPA believes that some sumps may be exempt from regulation under this provision. This interpretation is consistent with the preamble discussion of the spill exemption provision (48 FR 2508, January 19, 1983). As explained in that preamble, the purpose of the provision was to address emergency situations, whether due to accidental discharges or to spills during routine maintenance of equipment, where there is no time to comply with technical and procedural requirements pertaining to storage and treatment of hazardous waste (48 FR 2509, January 19, 1983). This rationale is inapplicable to units constructed for the purpose of containing hazardous waste from routine and systematic discharges of hazardous waste or designed to serve as the secondary containment for a tank system treating or storing hazardous waste.

III. Correction of Typographical Errors

On August 15, 1986, EPA published in the **Federal Register** a notice of corrections to the revised final tank system standards (51 FR 29430). Since that time, a number of additional typographical or coding errors in the final rules or in the notice of corrections have been brought to EPA's attention.

Several coding errors were a result of EPA's omission on several occasions of the word "system" when the term "tank system" as opposed to "tank" was intended to be used. In general, it is the Agency's intent that both a regulated hazardous waste tank and its ancillary equipment be subject to the revised standards of July 14, 1986. As such, EPA promulgated a definition of "tank system." Although the Agency tried to ensure that the term "tank system" was incorporated, wherever applicable, into the final rule, EPA apparently overlooked several situations where this term should have been likewise inserted. As previously discussed in Section II.A.1, the definition of "elementary neutralization unit" and "wastewater treatment unit" should have included the term "tank system." Likewise, the word "system" was inadvertently omitted from 40 CFR 264.190 and 265.190. In these paragraphs, the exemption from secondary containment was intended to apply to any tank and its ancillary equipment, i.e., any portion of the tank system, situated inside a building with an impermeable floor. In 40 CFR 264.190(b) and 265.190(b) a different omission occurred. Although the Agency's intent is not to require secondary containment of tank systems, including sumps, that serve the purpose of secondary containment, EPA does intend that these secondary containment systems, or portions thereof, must meet the design, installation, and operation requirements for a secondary containment system in accordance with 40 CFR 264.193(b)–(i) and 265.193(b)–(i). It is EPA's intent that these units be exempted only from 40 CFR 264.193(a) and 265.193(a), that, in any case, is redundant of the provision requiring secondary containment.

Another omission occurred in 40 CFR 264.193(f) and 265.193(f) in that EPA neglected to include aboveground sealless valves under the exemption from secondary containment. As evidenced in the preamble discussion for the July 14, 1986 standards (51 FR 25450), it was the Agency's intent that the exemption be applicable to these valves. A detailed discussion of this omission is provided in Section II.B.3.

EPA, in the process of including tank systems in the applicability section of the closure and post-closure requirements in Subpart G (40 CFR 265.110), inadvertently deleted the previously existing 40 CFR 265.110(b)(2), that addresses the applicability of Subpart G to waste piles and surface impoundments. Consistent with 40 CFR 264.110, EPA is today reinstating this provision in 40 CFR 265.110 and renumbering the paragraph as applied to tank systems. Today's rule also incorporates a conforming change into 40 CFR 264.114 and 265.114. In the revised tank system standards, EPA promulgated specific closure and post-closure care requirements in 40 CFR 264.197 and 265.197 and stated that tank systems also must meet the requirements of Subparts G and H, unless otherwise specified. EPA neglected to make the cross-reference in 40 CFR 264.114 and 265.114 to allow alternate post-closure care for certain tank systems as specified in CFR 264.197 and 265.197.

Several typographical errors have also been brought to the Agency's attention. In the first Note for 40 CFR 264.196 and 265.196, the reference to RCRA section 3004(u) and 3004(w), respectively, is a mistake. The correct reference should be RCRA section 3004(v). Another typographical error appeared in 40 CFR 265.201(c)(3) where a wrong citation of a paragraph was made. Instead of referring to "40 CFR 265.192(c)," a provision that has nothing to do with the level of waste in a tank, "40 CFR 265.201(b)(3) " requiring that uncovered tanks be operated to ensure at least 60 centimeters of freeboard, should have been cited. In this notice, EPA is also correcting these errors.

IV. Compliance With Administrative Procedure Act Requirements

Section 553(b) of the Administrative Procedure Act generally requires proposal of administrative rulemakings to receive public comment prior to promulgation. However, section 553(b) excludes certain types of rules from the prior notice-and-comment requirement, including interpretative rules and rules for which public comment is unnecessary. Because today's notice includes only interpretative statements concerning existing hazardous waste tank system requirements and minor technical corrections, prior notice and the solicitation of public comment on this notice is unnecessary.

List of Subjects in 40 CFR Parts 260, 264, 265, and 270

Administrative practice and procedure, Environmental protection, Hazardous waste, Tank systems, Waste storage and treatment, Water pollution control, Water supply.

Dated: August 24, 1988.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

40 CFR Part 260 is amended as follows:

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, and 3019 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939).

2. Section 260.10 is amended by revising the following definitions in alphabetical order:

§ 260.10 Definitions.

* * * * *

"Elementary neutralization unit" means a device which: (1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or they are listed in Subpart D of Part 261 of the chapter only for this reason; and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of this chapter.

* * * * *

"Wastewater treatment unit" means a device which: (1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of this chapter, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this Chapter; and

(3) Meets the definition of tank or tank system in § 260.10 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 264 is amended as follows:

3. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002, 3004, and 3005 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

4. Section 264.114 is amended by revising the first sentence to read as follows:

§ 264.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soils must be properly disposed of or decontaminated unless otherwise specified in §§ 264.197, 264.228, 264.258, 264.280 or § 264.310. * * *

5. Section 264.190 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 264.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 264.193. * * *

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 264.193(a).

* * * * *

6. Section 264.193 is amended by revising paragraph (f)(3) to read as follows:

§ 264.193 Containment and detection of releases.

* * * * *

(f) * * *

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

* * * * *

7. Section 264.196 is amended by revising the first Note to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

Note.—The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA section 3004(v), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

* * * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

40 CFR Part 265 is amended as follows:

8. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

9. Section 265.110 is amended by redesignating existing paragraph (b)(2) as (b)(3), and adding a new paragraph (b)(2) to read as follows:

§ 265.110 Applicability.

* * * * *

(b) * * *

(2) Waste piles and surface impoundments for which the owner or operator intends to remove the wastes at closure to the extent that these sections are made applicable to such facilities in § 265.228 or § 265.258; and

* * * * *

10. Section 265.114 is amended by revising the first sentence to read as follows:

§ 265.114 Disposal or decontamination of equipment, structures and soils.

During the partial and final closure periods, all contaminated equipment, structures and soil must be properly disposed of, or decontaminated unless specified otherwise in §§ 265.197, 265.228, 265.258, 265.280, or 265.310. * * *

11. Section 265.190 is amended by revising the first sentence of paragraph (a) and by revising paragraph (b) to read as follows:

§ 265.190 Applicability.

* * * * *

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and that are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. * * *

(b) Tank systems, including sumps, as defined in § 260.10, that serve as part of a secondary containment system to collect or contain releases of hazardous wastes are exempted from the requirements in § 265.193(a).

* * * * *

12. Section 265.193 is amended by revising paragraphs (f)(3) and (g)(3)(iii) to read as follows:

§ 265.193 Containment and detection of releases.

* * * * *

(f) * * *

(3) Sealless or magnetic coupling pumps and sealless valves, that are visually inspected for leaks on a daily basis; and

* * * * *

(g) * * *

(3) * * *

(iii) If contaminated soil cannot be removed or decontaminated in accordance with paragraph (g)(3)(ii) of this section, comply with the requirements of § 265.197(b);

* * * * *

13. Section 265.196 is amended by revising the first Note to read as follows:

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

Note.—The Regional Administrator may, on the basis of any information received that there is or has been a release of hazardous waste or hazardous constituents into the environment, issue an order under RCRA section 3004(v), 3008(h), or 7003(a) requiring corrective action or such other response as deemed necessary to protect human health or the environment.

* * * * *

14. Section 265.201 is amended by revising paragraph (c)(3) to read as follows:

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.

* * * * *

(c) * * *

(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3);

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

40 CFR Part 270 is amended as follows:

15. The authority citation for Part 270 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

16. Section 270.2 is amended by revising the following definitions in alphabetical order:

§ 270.2 Definitions.

* * * * *

Elementary neutralization unit means a device which: (a) Is used for neutralizing wastes only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or are listed in Subpart D of Part 261 of this chapter only for this reason; and (b) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of this chapter.

* * * * *

Wastewater treatment unit means a device which:

(a) Is part of a wastewater treatment facility which is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(b) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in § 261.3 of this chapter, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this chapter; and

(c) Meets the definition of tank or tank system in § 260.10 of this chapter.

* * * * *

[FR Doc. 88-19630 Filed 9-1-88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6806]

Suspension of Community Eligibility; Alabama et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is

published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community Name	County	Community No.	Effective date
Texas	Unincorporated areas	Kinney	481176	Sept. 2, 1988.
Do	Kountze, city of	Hardin	480845	Do.
Do	La Vernia, city of	Wilson	481050	Do.
Do	Ladonia, city of	Fannin	480811	Do.
Do	Lake Ransom Canyon, village of	Lubbock	481577	Do.
Do	Marfa, city of	Presidio	481493	Do.
Do	Morton, city of	Cochran	480127	Do.
Do	Nash, city of	Bowie	480058	Do.
Do	Needville, town of	Fort Bend	480820	Do.
Do	Unincorporated areas	Newton	480499	Do.
Do	Normangee, city of	Leon	480436	Do.
Do	Primera, town of	Cameron	481198	Do.
Do	Reno, city of	Lamar	481254	Do.
Do	San Diego, city of	Duval	481199	Do.
Do	Seagraves, city of	Gaines	480239	Do.
Do	Shamrock, city of	Wheeler	480656	Do.
Do	Shepherd, city of	San Jacinto	480554	Do.
Do	Tenehe, city of	Shelby	481006	Do.
Do	Trinidad, city of	Henderson	480333	Do.
Do	Trinity, city of	Trinity	481033	Do.
Do	Tuscola, city of	Taylor	481017	Do.
Do	Valentine, town of	Jeff Davis	481131	Do.
Do	Warren City, city of	Gregg	480840	Do.
Alabama	Tallassee, town of	Tallapoosa	010069	Do.
Florida	Pahokee, city of	Palm Beach	120219	Do.
Do	Pembroke Park, town of	Broward	120052	Do.
Kentucky	Unincorporated areas	Rowan	210203	Do.
Do	South Shore, city of	Greenup	210091	Do.
Do	Taylor Mill, city of	Kenton	210246	Do.
North Carolina	Kill Devil Hills, town of	Dare	375353	Do.
Do	Unincorporated areas	Lenoir	370144	Do.
Do	Kinston, city of	....do	370145	Do.
Do	Bayboro, town of	Pamlico	370183	Do.
Do	Vandemere, town of	....do	370438	Do.
South Carolina	Port Royal, town of	Beaufort	450028	Do.
Do	Sullivans Island, township of	Charleston	455418	Do.
Tennessee	Unincorporated areas	Roane	470267	Do.
Do	Rockwood, city of	....do	475443	Do.
Do	Unincorporated areas	Rutherford	470165	Do.
Do	....do	Sumner	470349	Do.
Do	Tazewell, city of	Claiborne	475449	Do.
New York	Poquott, village of	Suffolk	361518	Sept. 16, 1988.
Do	Alabama, town of	Genessee	361067	Do.
Do	Amsterdam, city of	Montgomery	360440	Do.
Do	Ancram, town of	Columbia	361312	Do.
Do	Arkport, village of	Steuben	360763	Do.
Do	Ballston Spa, village of	Saratoga	360710	Do.
Do	Black Brook, town of	Clinton	361309	Do.
Do	Boonville, town of	Oneida	360519	Do.
Do	Bradford, town of	Steuben	361207	Do.
Do	Broadalbin, village of	Fulton	361128	Do.
Do	Canastota, village of	Madison	360393	Do.
Do	Cazenoria, village of	....do	360394	Do.

State	Community Name	County	Community No.	Effective date
Do	Centre Island, village of	Nassau	360461	Do.
Do	Clinton, town of	Dutchess	361334	Do.
Do	Deposit, village of	Delaware	360043	Do.
Do	East Otto, town of	Cattaraugus	360067	Do.
Do	Fair Haven, village of	Cayuga	360109	Do.
Do	Fort Edward, village of	Washington	361536	Do.
Do	Gainesville, village of	Wyoming	361511	Do.
Do	Gallatin, town of	Columbia	361316	Do.
Do	Grafton, town of	Rensselaer	361150	Do.
Do	Grand View-on-Hudson, village of	Rockland	360680	Do.
Do	Greenport, village of	Suffolk	361004	Do.
Do	Hannibal, village of	Oswego	360652	Do.
Do	Hardenburgh, town of	Ulster	361578	Do.
Do	Herkimer, village of	Herkimer	360306	Do.
Do	Hornell, city of	Steuben	360776	Do.
Do	Hornellsville, town of	do	360777	Do.
Do	Huntington, town of	Suffolk	360796	Do.
Do	Huntington Bay, village of	do	361543	Do.
Do	Islip, town of	do	365337	Do.
Do	Jackson, town of	Washington	361444	Do.
Do	Madison, town of	Madison	361292	Do.
Do	Martinsburg, town of	Lewis	360372	Do.
Do	Morristown, village of	St. Lawrence	360706	Do.
Do	New Castle, town of	Westchester	360921	Do.
Do	Orangetown, town of	Rockland	360689	Do.

Issued: August 28, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-19988 Filed 9-1-88; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6906]

Final Flood Elevation Determinations; Arizona; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects a Notice of Final Flood Elevation Determinations of base (100-year) flood elevations previously published at 53 FR 19795 on May 31, 1988. This correction notice provides a more accurate representation of the flood hazards in the unincorporated areas of Mohave County, Arizona, because it reflects revisions made to the FIRM to remove the base (100-year) flood elevations along the Colorado River.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: According to information developed by the U.S. Bureau of Reclamation for the Colorado River Floodway Task Force, the flood elevations on the Colorado River may be significantly lower than previously predicted. As a result, the Federal Emergency Management Agency has determined that the base (100-year) flood elevations previously determined for the Colorado River in the unincorporated areas of Mohave County, Arizona, should be retracted. Therefore, the Agency hereby gives notice of the correction to the Notice of Final Determinations of base flood elevations for selected locations in Mohave County previously published at 53 FR 19795 on May 31, 1988, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67).

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The final base (100-year) flood elevations for selected locations in Arizona are correctly revised to read as follows:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Mohave County (unincorporated areas) (FEMA Docket No. 6906)	
Topock Marsh:	
Entire area	*460

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: August 29, 1988.

[FR Doc. 88-19987 Filed 9-1-88; 8:45 am]

BILLING CODE 6718-03-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 542

[APD 2800.12 CHGE 58]

General Services Administration Acquisition Regulation; Novation Agreements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12), is amended by adding subpart 542.12 to establish a uniform policy for processing novation agreements for GSA contracts that were set aside for small business. The intended effect is to ensure uniform handling of requests to recognize third-party successors in interest to GSA contracts.

EFFECTIVE DATE: September 15, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 566-1224.

SUPPLEMENTARY INFORMATION:

Background

The General Services Administration (GSA) published GSAR Notice 5–264 in the **Federal Register** (53 FR 26092) on July 11, 1988, inviting comments from interested parties. Public comments received supported the proposal or did not object to its prospective application. Comments received from various offices within GSA have been reviewed, reconciled, and incorporated when appropriate, in the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA indicated in GSAR Notice 5–264 that this rule may have an economic effect on a substantial number of small entities and invited comments from the public. No comments were received on the impact of the proposed rule. The final regulatory flexibility analysis which is available from the office identified above indicates that when a request to process a novation agreement is processed under FAR 42.12 the rule may affect small business firms that have been awarded contracts under the small business set-aside program and large business firms who are successors in interest to such small businesses. During FY 87, GSA awarded 3,598 contracts valued at $197,004,000 to small businesses under the small business set-aside program. Historical data is not maintained that would identify how many requests to process novation agreements involve a transfer from a small business to a large business. The rule will have a beneficial impact in that it will preserve the integrity of the small business set-aside program. However, the rule may also have a detrimental impact from the perspective of individual small business firms because it would adversely impact them by reducing the value of their assets in the event of a sale of all or part of their assets to a large business concern. This rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 48 CFR Part 542

Government procurement.

PART 542—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 542 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 542 is amended by adding Subpart 542.12 to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

Sec.
542.1203 Processing agreements.

3. Subpart 542.12 is added to read as follows:

Subpart 542.12—Novation and Change-of-Name Agreements

542.1203 Processing agreements.

In determining whether it is in the Government's interest to recognize a successor in interest under FAR 42.12, the contracting officer shall consider, in addition to information provided by affected contracting and contract administration offices, information provided by the agency small business technical advisor where the contract was awarded to a small business under a small business set-aside and the third-party successor is a large business. Under the following conditions the contracting officer should refuse to recognize the successor and nonconcur in the transfer of the contract(s): (a) There is adequate reason to believe that the transaction is intended to circumvent the requirements and objectives of the small business program, or (b) the contract involved is a multiple award schedule (MAS) contract and other MAS small business contracts exist for the same special item number(s). If the MAS contract involves both set-aside and non-set-aside special item numbers, the contracting officer shall cancel that part of the contract related to the set-aside items and process the novation request for the non-set-aside items under FAR 42.12.

Dated: August 19, 1988.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 88–20007 Filed 9–1–88; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council has approved revisions to DFARS Subpart 204.6 and DD Forms 350 and 1057. Much of the redesign pertains to the data elements that were previously added to Part E of the DD Form 350 for fiscal year 1988. These revisions do not have a significant effect beyond the internal operating procedures of the Department of Defense and publication for public comment is not required.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Effective October 1, 1988, contract reporting will be accomplished using revised forms DD Form 350 and DD Form 1057. Extensive revisions have been made to the two forms and to DFARS Subpart 204.6. Much of the redesign pertains to the data elements that were previously added to Part E of the DD Form 350 for fiscal year 1988.

In addition to changes to the forms, the instructions in DFARS Subpart 204.6 have been extensively revised. In some cases, the instructions have been changed for clarity or simplification without a corresponding change to the forms. The numbering of subsections within 204.671–5 and 204.672–5 has been revised to simplify text search and reference.

Four additional data elements have been added (items B4, B5E, B5F, B5G) to capture data regarding Taxpayer Identification Numbers at a future time. These data elements are to be left blank until further regulations are issued. The corresponding text at 204.671–5 is reserved.

A new data element (D4E) concerns the percent of premium associated with special treatment for disadvantaged businesses and institutions.

Orders under Federal Schedules and under another agency's contract have been revised in Item B13, Kind of Contracting Action, and changes should be noted at Item C2, Reason Not Synopsized; Item C5, Type of Contract; Item C13C, Place of Manufacture; and Item D1, Type of Business. Item D4, Preference Program, is a restructuring for reporting of preference programs and Item E1 is a relocation of Consulting Service Contract.

Various other report elements have been simplified or clarified, and clauses have been restructured at 252.204.

Coverage regarding Distribution of Defense Subcontracts Placed Overseas, formerly at 204.670–4, has been restructured and relocated at 204.674. The clause at 252.204–7005 has also been restructured.

With respect to awards of $25,000 and less, revisions have been made to be consistent with the data collected on the DD Form 350 and in the Federal Procurement Data System.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 88–610D in correspondence.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501.

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Owen L. Green III,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, 48 CFR Parts 204 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 204—ADMINISTRATIVE MATTERS

2. Subpart 204.6 is revised to read as follows:

Subpart 204.6—Contract Reporting

Sec.

204.601 Record requirements.
204.670–1 Scope.
204.670–2 Definitions.
204.670–3 Solicitation provisions and contract clauses.
204.670–4 Numbering of subpart.
204.671 Individual contracting action report (DD Form 350).
204.671–1 Scope.
204.671–2 Purpose.
204.671–3 Applicability and coverage.
204.671–4 Due date and distribution.
204.671–5 Instructions for completion of DD Form 350.
204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–P&L (M) 1014.
204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).
204.672–1 Scope.
204.672–2 Applicability and coverage.
204.672–3 Due date and distribution.
204.672–4 Definitions.
204.672–5 Instructions for completion of the DD Form 1057.
204.672–6 Instructions for preparing magnetic tape of DD Form 1057 actions, DD–P&L(M)1015.
204.673 Record of weighted guidelines method application (DD Form 1547).
204.674 Overseas distribution of defense subcontracts (DD Form 2139).
204.674–1 Definition.
204.674–2 Purpose.
204.674–3 Contract clause.

Subpart 204.6—Contract Reporting

204.601 Record requirements.

(a) The Defense Contract Action Data System (DCADS) meets the record retention requirements of FAR 4.601.

(d) The information required to be transmitted to the Federal Procurement Data System shall be transmitted by Washington Headquarters Services via the DCADS based on feeder reports (DD Forms 350 and 1057) submitted to it by the Departments.

204.670–1 Scope.

This section prescribes uniform reports which are required to be prepared by purchasing and contract administration offices in order to meet the requirements of the Federal Procurement Data System and the DCADS, and to provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

204.670–2 Definitions.

As used in 204.671 and 204.672, the following terms have the meanings stated below:

"Commercial and Government Entity (CAGE) Code" means:

(a) A code assigned by the Defense Logistics Services Center (DLSC) to identify a contractor or manufacturer; or

(b) A code assigned by a member of the North Atlantic Treaty Organization (NATO) and maintained by DLSC; or

(c) One of the above codes used in subpart 204.6 to identify contractors.

"Contract Administration Office" means the office which awards or executes a contracting action as defined below, when such action is accomplished by an ACO on behalf of the Contracting Officer who assigned contract administration responsibility to that office. This includes actions taken by a TCO relating to the settlement of terminated contracts.

"Contracting Action" means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contracts, including notices of award; purchase orders; BPA calls; job orders; task orders; delivery orders; contigency orders; administrative notices; communication services authorizations (CSA's); production lists; priced exhibits; other orders under existing contracts; and contract modifications such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

"Contracting Office" means any office which awards or executes a contracting action when that action is accomplished by the Contracting Officer. Included in the term are activities which place orders against DoD contracts, against another agency's contract, or against Federal Supply Schedules, when such action is not taken in conjunction with an assigned contract administration responsibility.

"Nonprofit Institution" means any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies.

"United States and Outlying Areas" is defined by Federal Information Processing Standard Publication (FIPS PUB) 55–2, *Guideline: Codes for Named Populated Places, Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas.* Included are American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.670–3 Solicitation provisions and contract clauses.

(a) Contractor Establishment Code. The contracting officer shall insert in solicitations exceeding the small purchase limit the provision at 252.204–7004 when it is appropriate to request the offeror to supply his Contractor Establishment Code.

(b) Contractor and Government Entity (CAGE) Codes. CAGE is the umbrella term for DoD assigned codes used to identify commercial and government activities. CAGE codes have also been known in the past as Federal Supply Codes for Manufacturers (FSCM), Federal Supply Codes for NonManufacturers (FSCNM), MILSCAP

codes, H–4 codes, H–8 codes, or other terms.

(1) The contracting officer shall insert the provision at 252.204–7007 when it is appropriate to request the offeror to supply its CAGE code.

(2) The contracting officer shall assist the offeror in obtaining the required CAGE code(s).

(3) Prospective offerors may not be denied a solicitation or bid set because the offeror does not have a CAGE code.

204.670–4 Numbering of subpart.

The numbering in this subpart differs from the standard DFARS numbering system in that the principal subdivisions within subsections 204.671–5 and 204.672–5 pertain to the parts of DD Form 350 or the section of DD Form 1057. These subdivisions are further segmented by reference to the report item or line number. Where appropriate, there is further segmentation by code descriptors. This provides for ease in identifying coverage for a specific item and entry code. For example, 204.672–5(b) Item B13 Code 1 readily identifies the citation as belonging to Code 1 of Item B13 of Part B of the DD Form 350.

204.671 Individual contracting action report (DD Form 350).

204.671–1 Scope.

This section prescribes the reporting on DD Form 350 of individual contracting actions in excess of $25,000. This reporting requirement has been assigned Report Control Symbol: DD–P&L(M)1014.

204.671–2 Purpose.

The DD Form 350 is used to collect data on contract placement statistics within DoD. The data gathered by means of the DD Form 350 are used for reporting the size and distribution of DoD contracting actions; types of contracts used; numbers and amount of contracts placed with categories of contractors such as small, small disadvantaged, and women-owned small business concerns; the extent competed and other essential facts about contract actions over $25,000 written by DoD. In many respects, the data summarized from the DD Form 350 are used to measure the efficiency and adequacy of the way in which the DoD acquisition program is executed. The data serve as the basis for internal DoD reports as well as reports to other departments of the executive branch, Congress, GAO and others. The data frequently provide a basis for new or revised acquisition policies. Therefore, it is most important that accurate and complete data be reported in a timely manner through the DD Form 350.

204.671–3 Applicability and coverage.

(a) DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures, labor statute requirements and contracting methodology. Part D gathers data relating to the various Socioeconomic programs to which DoD acquisitions are subject. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) DD Form 350 shall be prepared for each contracting action obligating or deobligating more than $25,000 which is executed by a Component of the Department of Defense except as indicated in (d) below. At the option of the headquarters of the Departments, contracting offices shall submit an automated record in lieu of a hardcopy DD Form 350. The contract file shall contain the hardcopy DD Form 350, an automated facsimile or an electronic equivalent as directed by the headquarters of the Departments for each individual contracting action in excess of $25,000.

(c) Multiple reports are required for a single action when both the Foreign Military Sales Program and other programs are involved (see 204.671–5(b), Item B9). Multiple reports may be required if more than one type of contract is involved (see 204.671–5(c) Item C5(i)).

(d) DD Form 350 shall not be prepared for the following contracting actions:

(1) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(2) Transactions for purchase of land, or rental or lease of real property.

(3) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(4) Transactions which involve Government bills of lading or transportation requests.

(5) Grants for basic research with educational institutions and other nonprofit organizations.

(6) Orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders against indefinite delivery contracts for petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported at the time of contract award.

(7) Awards to individuals in support of dependent schools, e.g., principals and teachers. These translations shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(8) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(9) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10–500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(10) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

204.671–4 Due date and distribution.

(a) The signed original of each DD Form 350, or electronic equivalent, shall be forwarded by the contracting office within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office, with the following exceptions:

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates may be extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occuring in the fiscal year at the option of the activity set forth in 204.671–4(d) below.

(b) Corrected reports shall be distributed in exactly the same manner as original reports.

(c) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item B12E) may be omitted and the word "classified" inserted in lieu thereof. In addition, enter 9999 in Items B12A and B12D and zeros (000) in Item B12C. Should further modification of coding items on DD Form 350 be deemed necessary for security classification purposes, the appropriate departmental offices identified in (d) below shall be contacted for special instructions.

(d) Distribution of DD Form 350 shall be as follows:

(1) Army contracting offices (including Corps of Engineers Civil Works) to: US Army Contracting Support Agency, Attn: Contract Support Office (SFRD–KS), Room 1C642, the Pentagon, Washington, DC 20310–0103.

(2) Navy contracting offices as directed by NAVSUP–024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the address shown in (d)(1) above.

(e) Contracting offices shall prepare DD Form 350 for contracting actions in excess of $25,000 which are accomplished by contract administration offices and are reportable in accordance with 204.671–3. To facilitate such reporting, the ACO or TOC shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY" within one working day after the action date. The contracting office shall prepare and submit the DD Form 350 within 3 working days after the receipt of this "REPORTING COPY."

204.671–5 Instructions for completion of DD Form 350.

(a) Part A of DD Form 350,

Item A1, Type of Report.

Code 0—Original Report. Enter this code if this is an original report (including termination actions) and complete sections A through F as appropriate.

Code 1—Cancelling Report. Enter this code if it is necessary to cancel a previously submitted report in its entirety (i.e., the report should not have been submitted), or if there was an error in Item A2, A3 or B1 of the original report. To cancel a report, complete only Items A1, A2, A3, and B1. Code 1 shall not be used for termination or cancellation actions (Item B13 is coded E, F or G).

Code 2—Correcting Report. Enter this code if it is necessary to correct a previously submitted report for any error other than in Items A2, A3 and B1. Enter the same codes in Items A2, A3, and B1 that were entered on the incorrect report and correct the codes in only those items being corrected. Leave all remaining items blank. If it is necessary to change Item A2, A3, or B1 regarding a previously submitted report, that report must be cancelled and a new "original" report submitted with the correct data.

Item A2, Report Number.

(i) Each contracting office shall assign to DD Forms 350 a unique 4-position number with alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a canceling or correcting action), then enter the report number assigned to the report being canceled or corrected.

Item A3, Contracting Office Code. Enter in Item A3 the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume III, DoD 4105.61M.

Item A4, Name of Contracting Office. Enter, in the space provided, sufficient detail to establish the identity of the contracting office submitting the report.

(b) Part B, DD Form 350.

Item B1, Contract Number. Enter, left justified, either the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting office and the fiscal year in accordance with 204.7003–1 (a) and (b) and Appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS–00S–27773, enter GS00S27773; for GP–16251 A, enter GP16251A, etc.).

Item B2, Modification. Order or Other Supplementary Procurement Instrument Identification Number. If applicable, enter the supplemental procurement identification number (up to 19 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7001. Usually calls and orders will be assigned a four position number in accordance with 204.7004–4. Usually a modification, including a modification of a call or order, will be assigned a six position modification number in accordance with 204.7004–3 or 204.7004–4(b) respectively.

Item B3, Action Date. Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the funds availability.

Item B4, Completion Date. Reserved.

Item B5, Contractor Identification Information. The Contractor name and codes requested in the items B5A through B5E refer to the contractor whose name and address appears in the contract document. For contracts placed with the Small Business Administration pursuant to the Small Business Act, Public Law 85–536, section 8(a), or orders placed against a contract awarded by another agency, enter the name and codes for the contractor establishment which will be performing under the contract. For Federal Supply Schedule orders, enter the name and codes of the contractor whose name appears on the schedule, not the name and codes of the agent to whom orders may be sent. For awards to the Canadian Commercial Corporation (CCC), enter the name and codes of the

appropriate CCC office, except as noted in Item B5B.

Item B5A, Contractor Establishment Code.

(i) Enter the 9-position Contractor Establishment Code, assigned by Dun & Bradstreet, that identifies the contractor.

(ii) The Contractor Establishment Code is available from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable Contractor Establishment Code;

(C) If not provided by the successful offeror, the FPDC Contractor Establishment Code file Alphabetical Listing shall be consulted.

(D) If this listing has no entry or has multiple Contractor Establishment Codes for the establishment, the applicable Contractor Establishment Code shall be obtained by contacting the representative at the following commercial telephone numbers: 215–776–4388/4389/4390/4391. All requesters should provide the following information:

Name of requesting contracting office;
Contracting office location (city/town; state/country);
Contracting office area code and commercial telephone number;
Name of individual making the request;
Total number of requests, if more than one; and
Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable, as displayed in Items B5C and B5D.

Item B5B, Commercial and Government Entity (CAGE) Code.

(i) Enter the 5-position code assigned by the Defense Logistics Services Center (DLSC) that identifies the Contractor plant or establishment.

(ii) For awards to the Canadian Commercial Corporation (CCC), enter the code which identifies the contractor establishment performing under the contract.

(iii) The CAGE code is available from one or more of the following sources:

(A) The offeror's response to the solicitation;

(B) The bimonthly H–8 publication issued by DLSC–JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017–3084, telephone numbers: AUTOVON 932–4725, FTS 522–4725, commercial (616) 961–4725.

(C) On-line access to the CAGE file through the Defense Integrated Data System (DIDS);

(D) On-line access to the Defense Logistics Agency CAGE file through the DLA Network; or

(E) Submission of a DD Form 2051, Request for Assignment of a CAGE Code, or electronic equivalent to DLSC–FBA at the above address. It is the responsibility of the contracting activity to request the assignment of the CAGE code by completing Section A of the DD Form 2051—*Request for Assignment of a Commercial and Government Entity (CAGE) Code.* (See 53.303–70–DD–2051). The prospective contractor will complete Section B of the form. The completed form will be submitted by the contracting activity to DLSC–FBA for processing and code assignment after it has verified the data submitted by the contractor.

(iv) Questions concerning obtaining computer tapes, electronic updates or code assignments should be directed to DLSC, Attn: DLSC–FBA, telephone numbers: AUTOVON 932–4358, FTS 522–4358, commercial (616) 961–4358.

Item B5C, Contractor name. In the space provided, enter the name (including division name) of the contractor.

Item B5D, Contractor address. In the space provided, enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

Item B5E, Contractor's Taxpayer Identification Number (TIN). Reserved.

Item B5F, Parent TIN. Reserved.

Item B5G, Parent Name. Reserved.

Item B6, Principal Place of Performance. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is performed for the Government, including military installations.

(i) If more than one location is involved, show the location involving the largest dollar amount of the acquisition. Do not show more than one location in Item B6.

(ii) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(iii) For construction contracts, report the actual site of construction.

(iv) For architect-engineering contracts, report the planned site of the construction.

(v) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(vi) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

Item B6A, City or Place Code.

(i) Where the place of performance is in the U.S. and Outlying Areas, enter the city or place code of the principal place of performance from FIPS PUB 55–2. If the city or locality is not listed, find the appropriate county in FIPS PUB 55–2 and enter the 5–digit place code for the county. For Washington, DC enter 50000. It may be necessary to refer to FIPS 55–2, Paragraph 5.2, *Entry Selection With the Aid of the Class Code,* to ensure that the correct city or place code is chosen. The class code must be used in addition to the place code in many instances to correctly identify the code which most accurately identifies the place of performance.

(ii) Leave this item blank for foreign countries.

Item B6B, State or Country Code.

(i) Enter the numeric state code for the U.S. and Outlying Area. FIPS PUB 5–2, *Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas,* or FIPS PUB 55–2 may be used for the identification of states and state equivalents in the United States and Outlying Areas.

(ii) Enter the alpha country code from FIPS PUB 10–3, *Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions,* to identify foreign countries.

Item B6C, City or Place/State or Country Names. Enter the name of the principal place of performance. If the location is the same as for Item B5D, enter the word "same". Do not leave blank.

Item B7, Type of Obligation. This item is used to identify the nature of the amount to be entered in Item B8. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

Item B8, Total Dollars. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

Item B9, Foreign Military Sale.

(i) If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. Any part of $25,000 or less shall be reported on the DD Form 1057.

(ii) Enter Code Y if the contracting action is under foreign military sales

arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter Code N.

Item B10, Multiyear Contract. Enter Code Y if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise, enter Code N.

Item B11, Total Multiyear Value. Enter the estimated multiyear contract value if Item B10 is coded Y and Item B13 is coded 1 or 3. Enter whole dollars only. Otherwise, leave this item blank.

Item B12, Principal Product or Service.

Item B12A, FSC or Service Code. Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD Form 350 must contain a 4-character entry for this item. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(i) Research, development, test, and evaluation (RDT&E) is defined in FAR 35.001. Each DD Form 350 action or RDT&E shall be assigned a code beginning with the letter A in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(ii) Services. All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(iii) Supply. Acquisition of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2–1, H2–2, and H2–3 also may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

Item B12B, DD Claimant Program Code. Enter the appropriate code that identifies the commodity described in Item B12E. Claimant Program Codes are defined in Section III, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M).

(i) If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(ii) If the description in Item B12E is for research and development, the objective of the research and development shall control the Claimant Program code to be entered; e.g., if the objective of the research and development is a guided missile, enter Code A20.

(iii) If the description in Item B12E is for research that cannot be identified with a particular claimant program, enter Code S10.

(iv) Contracts for ship repair, inspection and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible.

(v) Equipment rental (including rental of automated data processing equipment (as defined at Part 70)) and utility services shall be coded S10.

(vi) If a particular claimant program cannot be identified, enter Code S10 for services or code C9E for supplies or equipment.

Item B12C, System or Equipment Code. Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M). If the action is funded by the Strategic Defense Initiative (SDI), enter code CAA in this item in preference to any other applicable code. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition. If a weapon system or equipment code is not applicable, enter 3 zeros. DLA activities will use the code assigned by the sponsoring Service.

Item B12D, Standard Industrial Classification (SIC) Code. This item identifies the SIC of the procurement (as opposed to the SIC of the Manufacturer or Dealer). Enter the SIC Code in effect at the time of award from the OMB Standard Industrial Classification Manual. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

Item B12E, Name or Description. Enter the name or brief description of the commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying program number; e.g., WS–107A, can be used without classifying the report.

Item B13, Kind of Contracting Action.

(i) Enter one of the available codes as appropriate.

(ii) For a contract action which initially funds an award made in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons, enter the code best describing the action.

Code 1—Initial Letter Contract. Enter this code when a new letter contract is executed. For a letter contract which is designated as a modification of an existing contract, enter Code A.

Code 2—Definitive Contract Superseding Letter Contract. Enter this code when applicable. Enter code A for a definitive modification which supersedes a letter contract designated as a modification of an existing contract.

Code 3—Definitive Contract (including notice of award). Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

Code 4—Order Against DoD Basic Ordering Agreement. Enter this code when reporting orders against basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A–G, as appropriate, for modifications of such orders.

Code 5—Order Against DoD Contract. Enter this code when reporting orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders place against DoD contracts with the Small Business Administration 8(a) Program. Also use this code for contracting actions placed with workshops for the blind or other

severely handicapped. Use Codes A–G, as appropriate, for modifications of such orders.

Code 6—Order/Modification Under Federal Supply Schedule. Enter this code for all contracting actions (including modifications) under a Federal Supply Schedule contract (see FAR 8.401). This includes contracting actions against Veterans Administration Supply Schedules, GSA ADP Schedule contracts and GSA Area Contracts for Utility Services.

Code 7—Order Against Another Federal Agency's Contract. Enter this code for orders against a contract awarded by another Federal agency, other than a Federal Supply Schedule. Code 7 includes modifications and orders against contracts written by the Government Printing Office, Federal Prison Industries, Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy.

Code 8—Action With Another Federal Agency. Enter this code for all contracting actions, including modifications, placed directly with another Federal Agency where the Federal Agency is acting as the contractor. Use Code 7 for orders placed with a contractor who is performing on a contract written by another Federal Agency.

Code A—Additional Work, New Agreement. Enter this code when additional work is acquired by means of a bilateral supplemental agreement which increases the scope of existing contracts, including letter contracts.

Code B—Additional Work, Other. Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(i) Exercise of options for increased quantities or extended performance.

(ii) Incremental yearly buys under multiyear contracts.

(iii) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

Code C—Funding Action. Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year.

Code D—Change Order. Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

Code E—Termination for Default. Enter this code for termination for default.

Code F—Termination for Convenience. Enter this code for termination for convenience.

Code G—Cancellation. Enter this code for a cancellation action. Do not use this code to report the cancellation of a DD Form 350. (See Item A1).

(c) Part C of DD Form 350—The following rules apply to each of the items listed in Part C of DD Form 350:

(1) If Item B9 is coded Y or Item B13 is coded 8, leave all items in this Part C blank.

(2) If Item B13 is coded 1 through 4, 6 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(3) If Item B13 is coded 5, enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(4) If Item B13 is coded 7, completer Items C1, C2, C3, C5, C7, C8, C9, C10, C13A, C13B & C13D based on information obtained from the agency which awarded the initial contract. Leave Items C4, C6, C11 and C13 blank. Complete Item C12 based on information in the contract document.

(5) If Item B13 is coded B through G, the correct coding is controlled by the date of the solicitation.

(i) For solicitations issued prior to 1 April 1985 (pre–CICA), leave items C6 through C9 blank and enter the same code in each other item in Part C that was reported for the original contract governing this transaction.

(ii) For solicitations issued on or after 1 April 1985 (post–CICA), enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(6) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

Item C1, Synopsis.

Code Y—Enter if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

Code N—Enter if Code Y does not apply and complete Item C2.

Item C2, Reason Not Synopsized. Leave blank if Item C1 was coded Y, if not, enter the appropriate code.

Code A—The action was not synopsized due to urgency.

Code B—The action was not synopsized due to some other reason.

Item C3, Extent Competed. Enter the appropriate code shown below.

Code A—Competed Action. Enter code A if item B13 is coded 6 or when any of the following conditions apply:

(i) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(ii) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(iii) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received;

Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., 8(a) awards; brand name commercial products for authorized resale; or awards for utilities, except telecommunications, are excluded from Code A and shall be reported in Code B.

(iv) Contract action resulted from a contract awarded prior to CICA that used two-step sealed bidding, other sealed bidding, or was negotiated competitively.

Code B—Not Available for Competition. Enter code B when any of the following conditions apply to the award:

(i) Awards to regulated monopolies for utilities, except telecommunications, where the price negotiated is based on prices set by law or regualtion;

(ii) Brand name commercial products for authorized resale;

(iii) Procurements authorized or required by statute to be awarded to a designated source;

(iv) If the contract was awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act pursuant to FAR 19.8;

(v) Foreign Military Sales/ International Agreements;

(vi) Actions with another Federal Agency;

(vii) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

Code C—Follow-on to Competed Action. Enter Code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program

where such placement was necessitated by prior acquisition decisions (see Item C4, Code C).

Code D—Not Competed. Enter Code D when Codes A, B, or C do not apply.

Item C4, Competitive Characteristics. If Item C3 is coded B, do not complete this item. If B13 is coded 6, enter Code A. If Item B13 is coded 7, leave Item C4 blank. Otherwise, enter the code below which corresponds to the action:

Code A—Price Competition.

(i) A contract shall be reported as price competition if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices (including catalog or market prices). However, actions shall not be reported as "price competition" solely on the basis of the number of solicitations make. Contracting officers shall consider the content of the response of the solicitation, the contract history of the items purchased, and other relevant information, and shall exercise sound judgment in reporting actions as "price competition."

(ii) Even though catalog or market prices were offered, if the criteria for "price competition" as specified here have been met, then enter Code A.

(iii) A contract may also be reported as "price competition" even though only one offer is received, when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(iv) Where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, enter code E or F as appropriate.

(v) In no case shall cost-reimbursement type contracts be coded A.

(vi) Multiple awards in such areas as subsistence, clothing, and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

Code B—Design or Technical Competition. Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts and many initial contracts for new military weapons fall into the category of design or technical competition.

Code C—Follow-on After Price Competition and

Code D—Follow-on After Design/Technical Competition.

(i) A follow-on contract means a new acquisition (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor which continues or augments a specific military program in instances where such placement was necessitated by prior acquisition decisions. An example of a follow-on contract is one which by force of circumstances was awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor furnishing the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (i.e., price or design or technical) shall be reported as Code C or D, as appropriate.

(ii) For follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis, enter code E or F as appropriate.

Code E—Noncompetitive—Catalog of Market Price. A contracting action shall be reported Code E if there was no competition in the award and the reasonableness of price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public as defined in FAR 15.804–3(c). If the award involves catalog or market prices and the criteria for "price competition" as specified in Code A above have been met, enter Code A versus Code E.

Code F—Noncompetitive—Other. Enter Code F if there was no competition in the award, the work involved was not a follow-on acquisition reportable above, and the reasonableness of price was not based on established catalog or market price reportable above. Also enter this code to report actions where only one responsive offer was received and the solicitation was restricted to a prime contractor and his subcontractor for that item, unless a catalog or market price applies.

Item C5, Type of contract. (i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported:

(ii) Multiple contract types. Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Form 350 reports shall equal the total contract action.

(iii) Letter contracts. When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

Code A—Fixed Price Redetermination.

Code J—Firm Fixed Price.

Code K—Fixed Price Economic Price Adjustment.

Code L—Fixed Price Incentive.

Code R—Cost Plus Award Fee.

Code S—Cost Contract.

Code T—Cost Sharing.

Code U—Cost Plus Fixed Fee.

Code V—Cost Plus Incentive Fee.

Code Y—Time and Materials.

Code Z—Labor Hour.

Item C6, Number of Offerors Solicited. If Item B13 is coded 6 enter Code 2. If Item B13 is coded 7, leave Item C6 blank. Otherwise, enter the code below which describes the number of offerors solicited.

Code 1—Enter if only one offeror was solicited.

Code 2—Enter if more than one offeror was solicited.

Item C7, Number of Offers Received. Enter the code below which describes the number of offers received. If Item B13 is coded 6, enter Code 2.

Code 1—Enter where only one offer was received.

Code 2—Enter when more than one offer was received.

Item C8, Solicitation Procedures. (i) This item pertains to the requirements of FAR Part 6, Subparts 6.1, 6.2, and 6.3, (with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C9 below). Code A through K designate the full and open competition requirements set forth in FAR Part 6. Code M designates actions which do not require the application of the Competition in Contracting Act (see FAR 6.001(b)). Code N designates exceptions to full and open competition. (See FAR 6.3).

(ii) Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall

be reported the same as the initial contract when the conditions in FAR 6.001(e) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order.

(iii) If Item B13 is coded 6, enter Code B for single award schedules or Code F for multiple award schedules.

(iv) Enter Code K for all set-aside, including a Small Disadvantaged Business Set-Aside (see 206.203–70), a total set-aside for Historically Black Colleges and Universities (HBCU) or Minority Institutions (MIs) (see 206.207), or a portion of a Broad Agency Announcement (BAA) which was set-aside for HBCUs or MIs.

(v) Enter the code below which accurately describes the action.

Code A—Full and Open Competition—Sealed Bidding. Enter if the action resulted from an award pursuant to FAR 6.102(a).

Code B—Full and Open Competition-Competitive Proposals. Enter if the action resulted from an award pursuant to FAR 6.102(b).

Code C—Full and Open Competition—Combination. Enter if the action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D—Architect-Engineer. Enter if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E—Basic Research. Enter if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F—Multiple Award Schedule. Enter if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

Code G—Alternate Source-Reduced Cost. Enter if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H—Alternate Source—Mobilization. Enter if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J—Alternate Source—Engineering/R&D Capability. Enter if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K—Set-Aside. Enter if the action resulted from use of procedures for set-asides pursuant to 206.203–70, 206.270 or FAR 6.203.

Code M—Otherwise Authorized by Statute. Enter if the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR Part 6 (See FAR 6.001(b)). Code M should not be used for statutes addressed in FAR 6.302–5; these statutes require Code N in Item C8 and Code 5A in Item C9.

Code N—Other Than Full and Open Competition. Enter if the action resulted from use of other than full and open competition pursuant to FAR 6.3. Specifically included are those awards authorized or required by statute where, pursuant to FAR 6.302–5, acquisition was made from a specified source or other agency: Federal Prison Industries (UNICOR); qualified nonprofit agencies for the blind or other severely handicapped; Government printing or binding; or the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

Item C9, Authority for Other Than Full and Open Competition. Enter the appropriate code below when Item C8 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A—Unique Source. Enter if the action was justified pursuant to FAR 6.302–1(b)(1).

Code 1B—Follow-on Contract. Enter if action was justified pursuant to FAR 6.302–1(a)(2)(ii).

Code 1C—Unsolicited Research Proposal. Enter if action was justified pursuant to FAR 6.302–1(a)(2)(i).

Code 1D—Patent/Data Rights. Enter if action was justified pursuant to FAR 6.302–1(b)(2).

Code 1E—Utilities. Enter if action was justified pursuant to FAR 6.302–1(b)(3).

Code 1F—Standardization. Enter if action was justified pursuant to FAR 6.302–1(b)(4).

Code 1G—Only One Source—Other. Enter if action was justified pursuant to FAR 6.302–1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A—Urgency. Enter if action was justified pursuant to FAR 6.302–2.

Code 3A—Mobilization. Enter if action was justified pursuant to FAR 6.302–3(a)(2)(i).

Code 3B—Essential R&D Capability. Enter if action was justified pursuant to FAR 6.302–3(a)(2)(ii).

Code 4A—International Agreement/Foreign Military Sales. Enter if action was justified pursuant to FAR 6.302–4.

Code 5A—Authorized by Statute. Enter if action was justified pursuant to FAR 6.302–5(a)(2)(i).

Code 5B—Authorized Resale. Enter if action was justified pursuant to FAR 6.302–5(a)(2)(ii).

Code 6A—National Security. Enter if action was justified pursuant to FAR 6.302–6.

Code 7A—Public Interest. Enter if action was taken pursuant to FAR 6.302–7.

Item C10—Subject to Labor Standards Statutes. If Item B13 is coded 6, leave Item C10 blank. Otherwise, enter the appropriate code as follows:

Code A—Walsh-Healy Act, Manufacture. Enter this code when subject to the provisions of the FAR 22.6 and the offeror represents that it is a manufacturer.

Code B—Walsh-Healy Act, Regular Dealer. Enter this code when subject to the provisions of the FAR 22.0 and the offeror represents that it is a regular dealer.

Code C—Service Contract Act. Enter this code when subject to the provisions of the Service Contract Act (see FAR Part 37).

Code D—Davis-Bacon Act. Enter this code when subject to the Davis-Bacon Act.

Code Z—Not Subject to Above. Enter this code when this action is not subject to any of the statutory requirements above.

Item C11—Certificate of Current Cost or Pricing Data. If Item B13 is coded 6 or 7, leave Item C11 blank. Otherwise, enter the appropriate code below:

Code Y—A certificate of current cost or pricing data (see FAR 15.804–4) was obtained.

Code N—A certificate was not obtained.

Code W—The requirement was waived.

Item C12, Contract Financing (Progress Payments or Advance Payments). Enter the appropriate code as follows:

Code A—Enter if the action contains the provisions at 252.232–7007, FAR 52.232–16, or Alternate I.

Code B—Enter if the action contains the clause at 252.232–7004.

Code C—Enter if the action provides Percentage of Completion Progress Payment financing (see 232.102(e)(2)) and is for either:

(i) construction; or

(ii) shipbuilding and ship conversion, alteration or repair.

Code D—Enter if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4 and FAR 32.501–2).

Code Z—Enter if none of the above apply.

Item C13—Foreign Trade Data. The term "United States" (U.S.), as used in this item, includes the United States and Outlying Areas as defined in this

subpart, but excludes the Trust Territory of Palau.

Item C13A, Number of Offerors. Enter the number of offerors of foreign end product as defined in FAR 25, or services performed by foreign concerns. If zero, enter 0; if greater than 9, enter 9.

Item C13B, Buy American Act Percent Difference.

(i) Enter 2 zeros (00) if the evaluation factor under the Buy American Act is not used.

(ii) If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a two position whole number (i.e., for 5%, enter 05; for 11%, enter 11).

Item C13C, Place of Manufacture of Foreign Product.

(i) If Item B13 is coded 6 or 7, leave Item C13C blank. Otherwise, enter the appropriate code shown below:

Code A—Enter if the end product offered is manufactured in the U.S. but 50% or more of the cost of components represents components manufactured outside the U.S.

Code B—Enter if the end product offered is manufactured, mined, or grown outside the U.S. or the service shown is performed by a foreign concern.

(ii) If neither code applies, leave blank.

Item C13D, Country of Origin. If the product is a foreign end product, or the service is performed by a foreign concern, enter the FIPS PUB 10–3 code of the Country of Origin. If more than one foreign country is involved enter the code of the predominant foreign country based on dollar value.

(d) Part D of DD Form 350—The following rules apply to each of the items listed in Part D of DD Form 350:

(1) If Item B9, Foreign Military Sale, is coded Y or if Item B13 is coded 6 or 8, leave all items in this part blank.

(2) If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined in accordance with FAR 19.301–70 and FAR 19.301.

(3) If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction.

(i) If a DD Form 350 report was not submitted because none was required for the original action, enter the code which is applicable to the original contract action governing this transaction.

(ii) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

(4) If Item B13 is coded 7, complete Items D1, D4A, D4B, D4D, D6 and D8 based on information from the agency which awarded the original contract. Complete Items D4C and D4B in accordance with the instructions for that item. Leave all other items in Part D blank.

Item D1, Type of Business.

Code A—Small Disadvantaged Business (SDB). Enter Code A if the award was made to an SDB concern as defined in 219.001 and the place of performance is within the United States and Outlying Areas.

Code B—Other Small Business. Enter Code B if the award was made to a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and Outlying Areas.

Code C—Large Business. Enter Code C if the award was made to a domestic large business concern, and the place of performance is within the United States and Outlying Areas.

Code D—Workshop for the Blind or Severely Handicapped. Enter Code D if the award was made to a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and Outlying Areas.

Code F—Hospital. Enter Code F if the award is made to a hospital, and the place of performance is within the United States and Outlying Areas.

Code L—Foreign Concern/Entity. Enter Code L if the award is made to a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

Code M—Domestic Firm Performing Work Outside the United States. Enter Code M if the award is made to a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and Outlying Areas.

Code N—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter Code N for an award to an HBCU/MI as defined at 226.7002 and the place of performance is within the United States and Outlying Areas.

Code P—Other Educational. Enter Code P if award was made to an educational institution not qualifying as a HBCU/MI, and the place of performance is within the United States and Outlying Areas.

Code Z—Other Nonprofit. Enter Code Z if the award was made to a nonprofit or not for profit institution, that did not meet any of the above criteria and the place of performance is in the United States and Outlying Areas.

Item D2—Reason Not Awarded to SDB. If Item B7 is coded 7, leave Item D2 blank. If item D1 above is coded B, or C, enter the appropriate code below. Otherwise, leave this item blank.

Code A—No Known SDB Source. Enter if applicable.

Code B—SDB Not Solicited. Enter this code if there was a known SDB source but it was not solicited.

Code C—SDB Solicited—No Offer. Enter if an SDB was solicited but no offer was received from such concern or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid under this solicitation.

Code D—SDB Solicited—Offer Not Low. Also use this code if the SDB was not willing to accept award of a partial Small Business set-aside portion of an action at the price offered.

Code Z—Other Reason. Report this code when a SDB did not receive the award for any other reason.

Item D3, Reason Not Awarded to Small Business Concern. A Small Disadvantaged Business is included in the term Small Business Concern. If Item B13 is coded 7, leave this item blank. If Item D1 above was coded C, enter an appropriate code from the available codes below. Otherwise, leave blank.

Code A—No Known Small Business Source. Enter if applicable.

Code B—Small Business Not Solicited. Enter this code if there was a known small business source but it was not solicited.

Code C—Small Business Solicited—No Offer. Enter if a small business concern was solicited, but no offer was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid on under this solicitation.

Code D—Small Business Solicited—Offer Not Low. Enter this code if a small business concern was solicited but the low or most advantageous offer was not from small business. Also enter Code D if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

Code Z—Enter if not awarded to small business for any other reason.

D4 Preference Program.

Item D4A—Type of Small Business Set-Aside. For Historically Black Colleges and Universities and Minority Institution set-asides, enter Code A and report in D4C below. Enter the appropriate code shown below:

Code A—None. Enter this code if no set-aside preference for small business concerns was given. Enter this code for Historically Black Colleges and Universities and Minority Institution set-asides and report in D4C below.

Code B—Total Small Business Set-Aside. Enter this code if total small business set-aside preference was given pursuant to FAR 19.502–2.

Code C—Partial Small Business Set-Aside. Enter this code if partial small business set-aside preference was given pursuant to 219.502–3(70) or FAR 19.502–3.

Code D—Combined Small Business/Labor Surplus Set-Aside. Enter this code if combined labor surplus and set-aside preference was given pursuant to 219.502–70. The place of performance shown in Item B6 above must be located within a Labor Surplus Area.

Code E—Total Small Disadvantaged Business Set-Aside. Enter this code if this action was totally set-aside for small disadvantaged businesses pursuant to 219.502–72 and complete Item D4B below.

Item D4B—Type of Small Disadvantaged Business Set-Aside/SDB Preference. Enter the appropriate code shown below:

Code A—None. Enter this code if no preference was given.

Code B—Section 8(a) awards. Enter this code if the contract was awarded to the Small Business Administration (SBA) under section 8(a) of the Small Business Act pursuant to FAR 19.8.

Code C—Total SDB Set-Aside. Enter this code if the contract was awarded to as a result of SDB set-aside pursuant to 219.502–72.

Code D—SDB Evaluation Preference—Unrestricted. Enter this code if the solicitation was unrestricted but the SDB received an evaluation preference pursuant to 219.7000.

Code E—SDB Preferential Consideration—Partial Small Business Set-Aside. Enter this code if the action was partially set-aside for small business and preferential consideration was given to the SDB pursuant to 219.502–3(70).

Item D4C—Type of HBCU or MI Set-Aside Preference. If Item B13 is coded 7, use Code A. Otherwise, enter the appropriate code shown below:

Code A—None. Enter this code if the action was not set-aside for HBCUs or MIs.

Code B—Enter this code if the action was totally set-aside for HBCUs and MIs pursuant to 226.7004.

Code C—Enter this code if the action was partially set-aside for HBCUs or MIs pursuant to 226.7004.

Item D4D—Other Preference Program. Enter the appropriate code below which identifies whether or not additional preference was given in this action. Combined Small Business/Labor Surplus Set-Asides are reported in Item D4A above. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code B or C is entered, the entry in Item B6 must be a location which on the date of the initial action was located within a labor surplus area.

Code A—Directed to Workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR 8.7 for an item(s) on the Procurement List.

Code B—Partial Labor Area Set-Aside. Enter if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures (FAR 20.7003).

Code C—Tie Bid Labor Surplus Area Preference. Enter this code if the contract action was awarded to a concern in a labor surplus area and tie bid preference (FAR 14.407–6) was given.

Code Z—None of the Above. Enter this code if no other code in this item applies.

Item D4E, Premium Percent. Complete only if Item D4B is coded C–E or Item D4C is coded B or C. Otherwise, leave blank.

(i) If Item D4B is coded C–3, or Item D4C is coded B or C, enter the applicable premium percentage.

(ii) If Item B13 is coded 1–4 or A and a premium percentage was paid for the contract action, enter the premium percentage as a three digit number calculated in accordance with 219.202–5(b) and rounded to the nearest tenth, (e.g., 7.55% shall be entered as 076).

(iii) If Item B13 is coded 5 or B–G, enter the same percentage as the initial contract action (see 219.202–5(b)).

(iv) If the contract did not result in the payment of a premium, enter three zeroes (000).

Item D5—Ethnic Group. If Item B13 is coded 7, leave this item blank. If the award was made to a small disadvantaged business concern, enter the code below which corresponds to the ethnic group the contractor represented (see representation provision 252.219–7005). Otherwise, leave blank.

Code A—Subcontinent Asian (Asian-Indian) American.

Code B—Asian-Pacific American.

Code C—Black American.

Code D—Hispanic American.

Code E—Native American.

Code F—Other SDB (certified/determined by SBA).

Code Z—No representation.

Item D6, Women-Owned Small Business.

Code N—Enter if the contractor's response to FAR 52.219–3 indicates the firm is not a women-owned small business.

Code Y—Enter if the response to FAR 52.219–3 indicates in the affirmative that the contractor is a women-owned small business.

Code U—Enter if the information is not available because the contractor did not complete the representation under FAR 52.219.3.

Item D7—Small Business Innovation Research (SBIR) Program (Public Law 97–219). If B13 is coded 7, leave this item blank. Otherwise, enter the appropriate code as follows:

Code A—The action is not in support of a Phase I or II SBIR Program.

Code B—The action is related to a Phase I contract in support of the SBIR Program.

Code C—The action is related to a Phase II contract in support of the SBIR Program.

Item D8, Subcontracting Plan for Small Business, Small Disadvantaged Businesses or Historically Black Colleges and Universities or Minority Institutions. Enter the appropriate code as follows:

Code A—Plan Not Included—No Subcontracting Possibilities. Enter if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705–2(c)).

Code B—Plan Not Required. Enter if the subcontracting plan was not required (FAR 19.702(b)).

Code C—Plan Required—No Incentive Provisions. Enter if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

Code D—Plan Required—Includes Incentives Provisions. Enter if the subcontracting plan was required and incentive provisions referenced in 219.708(c)(1) or FAR 19.708(c) were included for subcontracting with small

business, small disadvantaged business, historically black colleges and universities, or minority institutions.

(e) Part E, DD Form 350.

Item E1, Contracting Advisory & Assistance Services. Enter the appropriate code below:

Code Y—Enter if the action includes any Contracting Advisory & Assistance Services (CAAS) as defined in FAR 37.2.

Code N—Enter if code Y does not apply.

Item E2–E8: Reserved.

(f) Part F, DD Form 350.

Item F1, Name of Contracting Officer or Representative. Enter the name (Last, First, MI) of the contracting officer or representative.

Item F2, Signature. Contracting officer or representative.

Item F3, Telephone Number. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

Item F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted.

204.671–6 Instructions for preparing magnetic tape of DD Form 350 actions, DD–P&L(M)1014.

A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the DoD reporting elements specified at 204.671–4(d) to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR–WHS with the agreement of the Departments.

204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).

204.672–1 Scope.

This section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671–2. This reporting requirement has been assigned Report Control Symbol: DD–P&L(M)1015.

204.672–2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared by each contracting office of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Subject to the approval of the organizations listed in 204.672–3, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Public Law 85–804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Involve orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders for petroleum or petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. These offices shall report the estimated total cost of indefinite delivery contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are orders on GSA stores depots;

(5) Involve Government bills of lading or transportation requests; or,

(6) Are for purchase of land, or rental/lease of real property.

(d) Actions and dollars shall be reported as indicated below:

(1) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "–" preceding the amount to signify a credit entry.

(2) *Number of actions.* Enter the number of actions being reported as follows:

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (B) below, each call or order under a blanket purchase agreement, basic ordering agreement, or indefinite delivery contract shall be counted as an action. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as, bread, milk, and ice cream;

(C) Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on electricity and gas contracts for all Naval Shore Establishments.

(3) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. If the net amount is a decrease, enter the symbol "–" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

204.672–3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date may be extended by 10 additional calendar days, but the cut-off date must be no later than 30 September.

(2) Letter of transmittal is not required.

(b) Distribution of the DD Form 1057 shall be as follows:

(1) Army contracting offices, including Corps of Engineers Civil works to:
U.S. Army Contracting Support Agency,
Attn: Contract Support Office (SFRD–KS), Room 1C642, the Pentagon,
Washington, DC 20310–0103

(2) Navy contracting offices as directed by NAVSUP–024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the office indicated in (b)(1) above.

(c) Contracting actions of $25,000 or less which are reportable in accordance with 204.672–2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly

annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 Definitions.

The terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. For the purposes of this subsection, the following terms have the meanings stated below:

"Delivery Orders—GSA Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by GSA.

"Delivery Orders—Other Federal Supply Schedules" is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by an Agency other than GSA. Orders under DoD or civilian agency indefinite delivery contracts which are not classified as Federal Supply Schedules are to be reported as "delivery orders—all others."

"Delivery Orders—All Other" includes orders under basic ordering agreements, orders under indefinite delivery contracts, and modifications of such orders.

"Other Contracting Actions" includes actions using other procurement methods not reported above, such as large purchases, tasking orders, job orders and modification of such actions.

"Small Purchase Procedures" as defined in FAR Part 13 includes: Purchase Orders; Orders under Blanket Purchase Agreements; Modifications to small purchase actions.

"Tariff or Regulated Industry" means an industry in which rates are fixed or adjusted by a Federal, State or other public regulatory body.

"United States and Outlying Areas" includes American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.672-5 Instructions for completion of the DD Form 1057.

(a) Section A, General Information.

Line A1—Month Ending. Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1989, enter 890430.

Line A2—Contracting Office and Mailing Address. Enter sufficient detail to establish the identity of the contracting office submitting the report.

Line A3—Reporting Office Code. Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(b) Section B, Contracting Actions. The entries for Lines B1 through B7E include new awards and modifications. For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

Line B1—Tariff or Regulated Acquisitions, Total. Enter on line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2—Contract for Foreign Government or International Organization. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Also report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor.

Line B3—Small Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Small Business concerns and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B3A—Small Purchase Procedures.

Line B3B—Delivery Orders—GSA Federal Supply Schedules.

Line B3C—Delivery Orders—Other Federal Supply Schedules.

Line B3D—Delivery Orders—All Other.

Line B3E—Other Contracting Actions.

Line B4—Large Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Large Business concerns and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B4A—Small Purchase Procedures.

Line B4B—Delivery Orders—GSA Federal Supply Schedules.

Line B4C—Delivery Orders—Other Federal Supply Schedules.

Line B4D—Delivery Orders—All Other.

Line B4E—Other Contracting Actions.

Line B5—Domestic and Foreign Entities Performing Outside the U.S. and Outlying Areas. Enter the total number of actions and total dollar value of actions which were placed with Domestic and Foreign entities and the place of performance was outside the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B5A—Small Purchase Procedures.

Line B5B—Delivery Orders—GSA Federal Supply Schedules.

Line B5C—Delivery Orders—Other Federal Supply Schedules.

Line B5D—Delivery Orders—All Other.

Line B5E—Other Contracting Actions.

Line B6—Educational, Nonprofit and Other Entities. Enter the total number of actions and total dollar value of actions which were placed with entities not listed above such as educational, not for profit and nonprofit institutions and the place of performance was in the U.S. and outlying areas as defined above. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B6A—Small Purchase Procedures.

Line B6B—Delivery Orders—GSA Federal Supply Schedules.

Line B6C—Delivery Orders—Other Federal Supply Schedules.

Line B6D—Delivery Orders—All Other.

Line B6E—Other Contracting Actions.

Line B7—Total Contracting Actions. Enter the total number of actions and total dollar value of actions reported in lines B1 through B6 above. Do not include the sublines from B3 through B6 in this total line. If directed by agency procedures, also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line B7A—Small Purchase Procedures.

Line B7B—Delivery Orders—GSA Federal Supply Schedules.

Line B7C—Delivery Orders—Other Federal Supply Schedules.

Line B7D—Delivery Orders—All Other.

Line B7E—Other Contracting Actions.

Line B8—Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and total dollar value of modification actions. This includes modifications to delivery orders and other contract

actions which may be included elsewhere in Part B.

(c) Section C, Extent Competed. Enter the total number of actions and total dollar value of actions in the appropriate category below based on the following criteria:

(i) Line C1 "Competed"—Except when the conditions in (ii) below apply, use when any of the following conditions apply:

(A) Actions not subject to CICA (see FAR 6.001) where at least two quotations or quotes were received.

(B) Small Business Small Purchase Set-Asides over $1,000.

(C) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(D) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(E) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., UNICOR, Sheltered workshops, Government printing or binding, 8(a) awards; brand name commercial products for authorized resale; or awards to regulated monopolies for utilities are excluded from competition and should be reported on Line C2 below);

(F) Contract action resulted from a contract awarded competitively prior to CICA (including two step formal advertising); or

(G) Delivery orders/modifications under a Federal Supply Schedule.

(ii) Line C2 "Not Available For Competition"—Use when any of the following conditions apply to the award:

(A) Awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation;

(B) Brand name commercial products for authorized resale;

(C) Procurements authorized or required by statute to be awarded to a designated source. This includes a contract awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (see FAR 19.8);

(D) Foreign Military Sales/ International Agreements;

(E) Actions with another Federal Agency;

(F) Awards, or modifications thereto, made pursuant to FAR 13.106(a) Purchases not over $1,000; or

(G) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD (P)) has determined that there is no opportunity for competition.

(iii) Line C3 "Not Competed"—Complete when Lines C1 or C2 do not apply.

Line C1—Competed, Total. Enter the total number of actions and total dollar value of actions which were competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C1A—Small Business Concerns.

Line C1B—Large Business Concerns.

Line C1C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C1D—Educational, Nonprofit and Other Entities.

Line C2—Not Available for Competition, Total. Enter the total number of actions and total dollar value of actions which were not available for competition. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C2A—Small Business Concerns.

Line C2B—Large Business Concerns.

Line C2C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C2D—Educational, Nonprofit and Other Entities.

Line C3—Not Competed, Total. Enter the total number of actions and total dollar value of actions which were not competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C3A—Small Business Concerns.

Line C3B—Large Business Concerns.

Line C3C—Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line C3D—Educational Institutions, Nonprofit and Other Entities.

(d) Section D, Research, Development, Test and Evaluation Actions. Enter the number and dollar value of actions for research, development, test and evaluation work on the Lines D1 through D5 as appropriate. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

Line D1—RDT&E Awarded to Small Business Concerns.

Line D2—RDT&E Awarded to Large Business Concerns.

Line D3—RDT&E Awarded to Domestic or Foreign Entities Performing outside the U.S. and outlying areas.

Line D4—RDT&E Awarded to Historically Black Colleges or Universities or Minority Institutions.

Line D5—RDT&E Awarded to Other Entities. Enter awards to other entities such as educational, nonprofit or not for profit institutions which were not reportable above.

(e) Section E, Selected Socioeconomic Statistics. Enter the total number of actions and total dollar value of actions on the appropriate lines below:

Line E1—Small Business Set-Aside Actions. Enter the total number of actions and total dollar value which were small business set-aside actions. Also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line E1A—Small Business—Small Purchases Set-Aside. Enter actions pursuant to FAR 13.105.

Line E1B—Small Business Set-Asides. Enter actions pursuant to FAR 19.502, as supplemented.

Line E1C—Combined Small Business/ Labor Surplus Area Set-Asides. Enter actions pursuant to 219.502–70.

Line E2—Small Disadvantaged Business Actions. Enter the total number of actions and total dollar value which were small disadvantaged business actions. Also enter the total number of actions and total dollar vlaue associated with each of the SDB categories shown below:

Line E2A—Section 8(a). Enter actions with the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act (FAR 19.8).

Line E2B—SDB Set-Aside or SDB Preference. Enter actions resulting from Total Small Disadvantaged Business Set-aside pursuant to 219.502–72 or actions resulting from application of an SDB evaluation preference (see 219.7002); or SDB preferential consideration (see 219.502–3(70)).

Line E2C—Small Business—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105 where award is to an SDB without the application of a preference.

Line E2D—Small Business Set-Aside. Enter actions pursuant to FAR 19.502, without a preference or preferential consideration to an SDB, but where the award is to an SDB.

Line E2E—Other awards made to SDB concerns.

Line E3—Women-Owned Small Business. Enter total actions and dollars made to Women-owned small businesses.

Line E4—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter the total actions and dollars made to an HBCU/MI pursuant to 226.7004.

Line E5—Sheltered Workshop. Enter total actions and dollars made to a

workshop for the blind or a workshop for the severely handicapped from the procurement list pursuant to FAR 8.7.

Line E6—Labor Surplus Area Set-Aside. Enter total actions and dollars made pursuant to 220.7003 or FAR 20.2. Do not include awards reported in Line E2C as a combined small business/labor surplus area set-aside.

(f) Section F—Small Purchase Procedures—Dollar Value Ranges. Enter the total number of small purchase procedure actions and total dollar value in the appropriate category shown below.

Line F1—$0.01–1,000.00.

Line F2—$1,000.01–2,500.00.

Line F3—$2,500.01–10,000.00.

Line F4—$10,000.01–25,000.00.

(g) Section G—Remarks and Authentications.

Line G1—Remarks. Enter any remarks applicable to this report.

Line G2—Contracting Officer.

Line G2A—Contracting Officer's Name. Enter the typed name (Last, First, Middle Initial) of the contracting officer or duly authorized representative.

Line G2B—Contracting Officer's Signature. Enter the signature of the person identified in line G2A above.

Line G2C—Telephone Number. Enter the telephone number (and area code) of the person identified in line G2A above.

Line G3—Date Report Submitted. Enter the date submitted as year, month and day in 2-digit numeric segments (YYMMDD). For example, enter 2 January 1999 as 990102.

204.672–6 Instructions for preparing magnetic tape of DD Form 1057 actions, DD–P&L(M) 1015.

Magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR–WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the magnetic tape are developed by DIOR–WHS with the agreement of the Departments.

204.673 Record of weighted guidelines method application (DD Form 1547).

* * * * *

204.674 Overseas distribution of defense subcontracts (DD Form 2139).

204.674–1 Definition.

"Country of Origin," as used in this section, means the country where the actual producer of supplies or provider of services is located.

204.674–2 Purpose.

To assist DoD monitoring of the volume, type, and nature of subcontracts with foreign sources the clause at 252.204–7005 requires prime contractors and first tier subcontractors to report (using DD Form 2139) those subcontracts or modifications thereof exceeding $25,000 where the country of origin is outside the United States, its territories and possessions.

204.674–3 Contract clause.

The contracting officer shall insert the clause at 252.204–7005, Overseas Distribution of Defense Subcontracts, in any contract for other than Commercial items which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to the modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7004 [Amended]

3. Section 252.204–7004 introductory paragraph is amended by removing "204.670–3" and adding "204.670–3(a)".

4. Section 252.204–7005 is revised to read as follows:

252.204–7005 Overseas Distribution of Defense Subcontracts.

As prescribed at 204.674–3, insert the following clause:

OVERSEAS DISTRIBUTION OF DEFENSE SUBCONTRACTS (AUG 1988)

(a) For each subcontract or modification thereof which exceeds $25,000, where the country of origin is outside the United States or its territories and possessions, the Contractor agrees to prepare and submit the Subcontract Report of Foreign Purchases on DD Form 2139 to Director for International Acquisition, OASD (P&L) (P), Department of Defense, The Pentagon, Washington, DC 20301–3060. Copies of the form may be obtained from the Contracting Officer. Contractors who maintain information on foreign subcontracts on an automated data base may submit the information in a report format compatible with their automated system. In all cases, however, the report shall include all of the information required by the DD Form 2139. A sample of the form is shown at DoD FAR Supplement 53.303–70–DD–2139.

(b) For purposes of this clause, the term "country of origin" means the country where the actual producer of supplies or the actual provider of services is located.

(c) The required information, if any, shall be as of the last day of the calendar year quarter and submitted within ten (10) days of the end of each quarter.

(d) The prime Contractor agrees to insert a provision substantially similar to this in all first-tier subcontracts over $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence. The prime Contractor shall also identify the applicable prime contract number to the subcontractor for reporting purposes.

(End of clause)

252.204–7007 [Amended]

5. Section 252.204–7007 introductory paragraph is amended by removing "204.670–5(a)" and adding "204.670–3(b)(f)".

[FR Doc. 88–19534 Filed 9–1–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 63

[Docket 45353; Amdt. 63–1]

Contract Appeals Board Procedures; Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This rule adopts as final, the Department of Transportation (DOT) Board of Contract Appeals (BCA) Rules of Procedure, which were recodified and republished as an interim final rule in Part III of the **Federal Register** on Wednesday, December 23, 1987 (52 FR 48630). The interim final rule allowed for 60 days within which interested parties could submit comments on the interim final rule to the Department of Transportation. Two comments were received. As a result of these comments, this final rule incorporates a number of changes to the Rule as published on December 23, 1987. The comments received and our response to each are discussed in detail below.

DATES: September 2, 1988.

FOR FURTHER INFORMATION: Contact Roger Martino at 400 Seventh Street SW., Room 9100, Washington, DC 20590, phone number (202) 366–4271.

SUPPLEMENTARY INFORMATION: Comments were received from the American Bar Association (ABA) Public Contract Law Section and from the Administrative Conference of the United States (ACUS).

The Comments

The ABA Public Contract Law Section stated that it is unclear from the wording of Board Rule 18 (Discovery—Depositions) whether parties may agree to take depositions without application to the Board. It recommended that the Board eliminate the ambiguity by adopting language similar or identical to

that used by the Armed Services Board of Contract Appeals (ASBCA) and other boards. In pertinent part, ASBCA Rule 14 states: "After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, order the taking of testimony of any person by deposition upon oral examination * * *"

DOT BCA Rule 18 (Discovery—Depositions) as presently drawn states in subparagraph (a) that, "[the] parties are encouraged to engage in voluntary discovery procedures." Subparagraph (b) (Obtaining a deposition) states, "After an appeal has been docketed, the Board upon application of any party and for good cause shown, may order the taking of testimony of any person by deposition upon oral examination * * *"

We do not recall receiving inquiries regarding the need for a Board order as a prerequisite to taking depositions under Rule 18(b). We believe the lack of inquiries is because most parties read Rule 18(b) in context with Rule 18(a). Under such a reading, one would consider the taking of depositions as part of the voluntary discovery process, and apply for a Board order to compel the taking of a deposition only after voluntary efforts have failed. This has been the general procedure of parties practicing before the Board.

Nonetheless, we believe the ABA's recommendation does have merit, and we have changed paragraph (b) of section 6302.18 (Rule 18).

Many government officials, contractors and attorneys agree that contract disputes are becoming increasingly more complex, expensive and time-consuming, and that litigation of such disputes is escalating beyond manageable levels. ACUS suggests that the Board revise its rules to incorporate less formal procedures designed to make resolution of contract disputes faster and less expensive. ACUS recommends adding procedures to the Board's rules allowing for mini-trials, settlement judges, and "other alternative means of dispute resolution." ACUS reports that these methods have been used successfully in the private sector for many years, and suggests they be adopted by the Board.

We agree that the Board may benefit significantly by adopting two of the Alternative Dispute Resolution (ARS) methods and, where appropriate, encouraging practitioners before it to use such methods. The two ADR methods appropriate for Board employment are the use of Settlement Judge and a Mini-Trial. A Settlement Judge (a judge (i.e., neutral advisor) other than the presiding judge) is used where it is possible to achieve resolution of a case through frank, off-the-record, discussion of a case's strengths and weaknesses before a neutral advisor. A Mini-Trial is a flexible, off-the-record, expedited procedure where each side presents an abbreviated version of its case.

The Congressional mandate of section 8(e) of the Contract Disputes Act of 1978, that agency boards "shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes" (41 U.S.C. 607), clearly gives the Board authority to institute procedures such as ADR to resolve disputes. We, therefore, adopt a new Rule 30 (Alternative Dispute Resolution Methods).

Executive Order 12291

Under Bulletin No. 85–7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule simply finalizes the recodification and transference of the Department of Transportation Board of Contract Appeals Rules from 41 CFR Parts 12–60, to 48 CFR Chapter 63. To the extent changes are made to the current rules, they are either for clarification purposes, or are designed to implement quicker resolution of disputes.

Papework Reduction Act

This rule does not contain any information collection requirements requiring review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504 (h)).

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administration Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP letter 83–2, OFPP states that an agency must provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As explained above, changes made to the DOT BCA Rules are either for clarification purposes or to allow for quicker resolution of disputes.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. For this reason, the Rules were published as an interim final rule on December 23, 1987, which allowed for the submission of comments for a period of 60 days. The Departmental Docket Clerk received two comments within the allotted period for submission of comments. Both comments were reviewed and the rules are being changed as described herein, to incorporate the suggestions.

Executive Order 12612

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612.

This rule is issued under delegated authority under 49 CFR Part 1.59(q).

List of Subjects in 48 CFR Ch. 63

Government procurement.

Dated: August 26, 1988.

Jan H. Seymour,

Assistant Secretary for Administration.

Accordingly, the Department of Transportation amends 48 CFR Ch. 63 as follows:

1. The authority for Chapter 63 continues to read:

Authority: Contract Disputes Act of 1978 (41 U.S.C. 600, et seq.).

6302.18 [Amended]

2. Paragraph (b) of section 6302.18 (Rule 18), is revised to read:

* * * * *

(b) Obtaining a deposition. After an appeal has been docketed, the parties may voluntarily agree to take, or the Board may, upon application of either party and for good cause shown, order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

3. The table of contents for Part 6302, Rules of Procedure, is amended as follows: "6302.30 Reserved (Rule 30)" is changed to read "6302.30 Alternative Dispute Resolution Methods (Rule 30)".

4. Section 6302.30 (Rule 30) is revised to read:

6302.30 Alternative Dispute Resolution Methods (Rule 30).

(a) To facilitate settlements in cases which might involve lengthy hearings (in excess of one week) of complex factual disputes and settled legal principles, the Board has adopted two methods of Alternative Dispute Resolution (ADR): Settlement Judges and Mini-Trials. These procedures are designed to supplement existing settlement techniques and not to replace them. Procedures regarding implementation of these ADR methods will be distributed to the parties, in appropriate cases, but may be obtained from the Board upon request.

(b) To employ ADR both parties must initially agree to use an ADR method. The parties must communicate that agreement in writing to the presiding judge as early as possible, preferably before commencement of voluntary discovery. The presiding judge shall promptly decide the appropriateness of the ADR method requested and so advise the parties. Where, after application of an ADR method, the parties are unable to resolve a dispute, the matter shall be restored to the docket of the presiding judge for hearing.

[FR Doc. 88-20053 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 53, No. 171
Friday, September 2, 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 910

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 910 for the 1988–89 marketing year established for the lemon marketing order. Funds to administer this program are derived from assessments on handlers.

DATE: Comments must be received by September 12, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, 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 made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, D.C. 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 910 (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. 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 disporportionately burdened. Marketing orders issued prusuant 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 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual 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 lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assesment rate for a particular fiscal year shall apply to all assessable lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Lemon Administrative Committee (Committee), the agency responsible for local administration of the lemon marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Committee are handlers and producers of lemons. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. 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. The recommended budget and rate of assessment is usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on July 26, 1988, and unanimously recommended 1988–89 marketing order expenditures of $734,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1987–88 marketing year budget expenditures were $695,000 and the assessment rate was $0.045 per carton. Assessment income for 1988–89 is estimated at total $715,500 based on a crop of 15,900,000 cartons of lemons. The remaining $18,500 is expected to be derived from interest and miscellaneous income. Reserve funds may also be used to meet any deficit in assessment income.

While this proposal 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 the 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 for the program 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 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, it is proposed that a new § 910.226 be added as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Add new § 910.226 to read as follows:

§ 910.226 Expenses and assessment rate.

Expenses of $734,000 by the Lemon Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 910.41 is fixed at $0.045 per carton of assessable lemons. Unexpended funds may be carried over as a reserve.

Dated: August 29, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–19990 Filed 9–1–88; 8:45 am]

BILLING CODE 3410–02–M

---

7 CFR Part 987

[Docket No. FV–88–117]

Domestic Dates Produced or Packed in Riverside County, CA; Proposal To Change the Conversion Factor Used To Compute the Whole Data Equivalent Weight of Pitted Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the conversion factor used to convert the weight of pitted dates to their whole date equivalent. Currently, the weight of pitted dates is converted to whole date weight by dividing the weight of pitted dates by 0.875. This proposal would change this factor to 0.83. This change would result in more precise inventory, sales, and shipment reports. Carryover determinations and assessment determinations would also be affected.

DATE: Comments must be received by September 19, 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: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 987 [7 CFR Part 987], regulating the handling of domestic dates produced or packed in Riverside County, California. 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 26 handlers of California dates regulated under this marketing order, and approximately 135 date producers in California. 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 date handlers and producers may be classified as small entities.

This proposal would change § 987.105 of Subpart—Administrative Rules [7 CFR 987.101—987.172]. That section specifies a conversion factor of 0.875 for use in computing the whole date equivalent weight of pitted dates. The weight of pitted dates is converted to whole date weight by dividing the weight of the pitted dates by that factor. The current factor has been in place since the late 1960's.

The current conversion factor is based on a weight loss resulting from the removal of the pit, estimated at 12.5 percent of the whole date weight. However, the 12.5 percent represents the weight of the pit only, and does not account for all of the date flesh lost in the pitting process. Use of updated conversion factor would result in more precise sales, shipment, and inventory reports. Carryover determinations completed on a whole date weight would be affected. Use of the updated factor will also affect assessment weight obligations for pitted dates because the assessment obligations of date handlers are computed on a whole date weight basis.

At a meeting held on June 27, 1988, the committee unanimously recommended that the conversion factor be changed from 0.875 to 0.83, effective October 1, 1988. Handlers of pitted dates furnished information to the committee indicating that the weight loss resulting from the pitting process ranges from 15 to 19 percent with an average of 17 percent. The conversion factor of 0.83 is based on a 17 percent weight loss. The committee stated that the 0.83 conversion factor would more accurately reflect the weight loss resulting during the pitting process. Updating the conversion factor would not add to or complicate handlers reporting requirements.

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

It is found and determined that a comment period of less than 30 days is appropriate because this action needs to be effective October 1, 1988, the beginning of the 1988–89 shipping season. A comment period longer than provided could delay the effective date into the shipping season.

Lists of Subjects in 7 CFR Part 987

Marketing agreements and orders, Dates, California.

For the reasons set forth in the preamble, § 987.105 of Subpart-Administrative Rules [7 CFR 987.101–987.172] is proposed to be revised as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 987 continues to read as follows:

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

2. Section 987.105 is revised to read as follows:

§ 987.105 Whole equivalent of pitted dates.

For the purposes of this part, the whole date equivalent weight of pitted dates shall be determined by dividing the weight of the pitted dates by 0.83.

Dated: August 30, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88-20063 Filed 9-1-88; 8:45 am]

BILLING CODE 3410-02-M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) withdraws proposed amendments to 12 CFR Part 615 published for comment on October 16, 1986 (51 FR 36824), and proposes for comment amendments to 12 CFR Part 615, Subparts I, J, K, L, M, and N relating to the adoption of capitalization bylaws, the issuance and retirement of equities thereunder and related disclosure requirements, and the unallocated surplus of banks for cooperatives. The proposed regulations set forth requirements for capitalization bylaws, requirements that must be met in order for equities issued thereunder to qualify as permanent capital, requirements designed to ensure implementation of cooperative principles, disclosure requirements for the issuance and retirement of equities, requirements for the retirement of equities, and requirements for additions to unallocated surplus in banks for cooperatives. The proposed amendments reflect changes in the capitalization provisions of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2001 et seq., made by the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233. Upon the adoption in final form of these proposed regulations as well as the proposed capital adequacy regulations published for comment on May 12, 1988 (53 FR 16948), the FCA would rescind Capital Directive No. 1. The effect of the proposed regulations would be to give Farm Credit System (System) institutions greater flexibility in determining their capital structures and to provide guidance to such institutions in the adoption of capitalization bylaws that will enable them to meet minimum permanent capital standards established by the FCA, as required by the 1987 Act.

DATE: Comments must be submitted on or before September 16, 1988.

ADDRESSES: Written comments may be mailed (in triplicate) to Anne E. Dewey, General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Va. 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4402

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444

SUPPLEMENTARY INFORMATION: On July 23, 1986, the Farm Credit Administration (FCA) published for comment proposed regulations (51 FR 26402) relating to capital adequacy and minimum capital standards for Farm Credit System (System) institutions pursuant to section 4.3(a) of the Farm Credit Act of 1971 (1971 Act), 12 U.S.C. 2154. On October 16, 1986, the FCA published for comment proposed amendments to Parts 614 and 615 of Title 12 of the Code of Federal Regulations that were referred to as "capital adequacy related regulations." Before final action had been taken on these proposals, the Agricultural Credit Act of 1987 (1987 Act) was enacted on January 6, 1988, substantially amending, among other things, the capitalization provisions of the 1971 Act and directing the FCA to adopt regulations setting minimum "permanent capital" standards that take into account risk factors. As a result of the statutory changes the FCA, on April 5, 1988, (published May 12, 1988, at 53 FR 16948) withdrew the proposal of July 23, 1986, and published for comment a regulation setting forth a minimum permanent capital standard expressed as a ratio of permanent capital to risk-adjusted assets. In that proposal, the FCA announced its intention to propose amendments to the capital adequacy related regulations necessary to conform the regulations to the statutory changes made by the 1987 Act. The capital adequacy regulations proposed on May 12, 1988, were the subject of a public hearing on June 9, 1988. The FCA is considering the comments submitted during the comment period and the testimony given at the public hearing and will be adopting a final capital adequacy regulation in the near future. The FCA is also considering what changes to the proposed amendments to Part 614 published on October 16, 1986, are appropriate and will be taking into action on that proposal in the near future. The FCA withdraws the proposed amendments to Part 615 published on October 16, 1986, and publishes for comment proposed amendments that reflect changes made by the 1987 Act in the capitalization provisions of the 1971 Act. Upon the adoption in final form of these proposed regulations and the proposed capital adequacy regulations published on May 12, 1988, the FCA's Capital Directive No. 1 would be rescinded.

I. Statutory Changes

Prior to the 1987 Act, the 1971 Act contained detailed and specific provisions relating to the issuance and retirement of equities of System institutions and the distribution of their earnings. Also boards of directors of System institutions were empowered to adopt bylaws without shareholder approval and the FCA was empowered to issue and amend bylaws. FCA had in fact prescribed model bylaws and required FCA approval for any deviation therefrom. As a result of the detailed statutory provisions and required FCA approvals, System institutions had limited discretion in the issuance and retirement of equities and the distribution of earnings. Only production credit associations could issue stock to persons other than eligible borrowers, and this was rarely done. Borrowers were required to purchase stock in an amount equal to a specified percentage of their loan. The Federal land bank and the Federal land bank associations were required to retire the borrower's stock upon repayment of the loan, and borrowers from other System institutions had expectations that their stock would be retired soon after repayment of a loan or on some revolving cycle based on board policy or custom and practice. Transfer rights were restricted.

The 1987 Act provided a mechanism for Federal assistance to financially troubled System institutions by providing for the establishment of the Farm Credit System Assistance Board (Assistance Board) and the Farm Credit System Financial Assistance Corporation (FAC). Upon certification by the Assistance Board, the FAC was authorized to purchase preferred stock in System institutions. The 1987 Act provided assurance that stock issued prior to the 1987 amendments and

during a brief transitional period thereafter would be retired at par, regardless of its book value. However, the 1987 Act also significantly changed the capitalization of System institutions prospectively by adding a new section 4.3A to the 1971 Act, which directs System institutions to adopt shareholder-approved capitalization bylaws that meet certain statutory requirements and that will enable the institution to meet minimum permanent capital standards established by the FCA. These statutory requirements have the effect of assuring that stock and participation certificates issued by the System institutions after the adoption of the new bylaws will be ture "at risk" equity investments that can only be retired at the discretion of the board of directors (providing the minimum permanent capital standards established by FCA are met). Section 4.3A also allows equities, except for voting stock, to be issued to non-borrowers.

Although the 1987 Act allowed for the consolidation of all of the banks for cooperatives (BCs) into a national bank for cooperatives, the statutory provisions relating to the capitalization and distribution of earnings of BCs in Title III of the 1971 Act were generally unchanged except that a number of required FCA prior approvals were deleted. However, BCs are subject to the requirements of new section 4.3A of the Act.

On the other hand, the 1987 Act mandated the merger of the Federal land bank (FLB) and the Federal intermediate credit bank (FICB) in each district into a Farm Credit Bank (FCB) within 6 months of enactment, and enacted a new Title I and Title II under which such banks and their related associations are to operate. The 1987 Act authorized the merger of Federal land bank associations (FLBAs) and production credit associations (PCAs) into associations having the combined powers of an FLBA and a PCA (agricultural credit associations, or ACAs). The 1987 Act also allows FLBAs to become direct lenders. The extensive statutory provisions governing capitalization and distribution of earnings under which the FLB, FICB, FLBAs and PCAs operated were repealed by the 1987 Act, effective 6 months from enactment. Under the new Title I, the boards of directors of FCBs are authorized to "provide in accordance with section 4.3A, through bylaws and subject to FCA regulations, for the capitalization of the bank and the manner in which bank stock is issued, held, transferred and retired and the bank earnings distributed." Associations are similarly authorized under new Title II.

Section 4.3A of the 1971 Act, as amended, requires institutions to adopt shareholder-approved capitalization bylaws that meet the following statutory requirements:

(1) Issuance of voting stock must be restricted to farmers, ranchers, producers or harvesters of aquatic products, eligible cooperatives, and System associations and banks for cooperatives;

(2) Borrowers must be required to purchase stock in an amount that cannot be less than 2 percent of the loan amount or $1,000, whichever is less;

(3) Voting stock must be converted to non-voting stock within 2 years after the loan of a borrower is repaid in full;

(4) Holders of stock and participation certificates issued before the adoption of the capitalization bylaws must be required to exchange a portion of such stock (which is protected from impairment under section 4.9A of the 1971 Act, as amended) for new stock (which is not protected);

(5) Stock must be retirable solely at the discretion of the board (provided the minimum permanent capital standards established by the FCA are met);

(6) Stock must be transferable to persons eligible to hold it; and

(7) The bylaws must enable the institution to meet capital adequacy standards established by the FCA.

The FCA's authority to issue and amend bylaws was deleted by the 1987 Act. The FCA's primary regulatory interests in the capitalization of Farm Credit Banks after the 1987 amendment of the 1971 Act are: (1) To set minimum capital standards for safe and sound operation and the protection of investors; (2) to assure that capitalization bylaws enable institutions to meet minimum capital standards; (3) to assure that capitalization bylaws are consistent with law and cooperative principles (including one-person-one-vote and equitable treatment); (4) to assure that adequate disclosure is made to purchasers of equities of individual System institutions; and (5) to assure that obligations under joint and several liability can be met. The proposed regulations are deemed to be necessary and appropriate to achieve those ends. The details of capitalization are otherwise left to the boards of directors of the institutions and their shareholders.

II. Proposed Regulation

Subpart I—Issuance of Equities

The current provisions of Subpart I relate to debt-to-capital ratios, which will be superseded by the minimum permanent capital standards proposed on May 12, 1988, when they are adopted in a final regulation. Therefore, the FCA proposes to amend Subpart I to set forth the statutory requirements for the bylaws, requirements designed to assure that the bylaws are consistent with law and with cooperative principles and that equities issued thereunder will enable the institution to meet minimum permanent capital standards established by the FCA, and disclosure requirements for the issuance and retirement of equities by individual System institutions.

Section 615.5220 Issuance of Equities

Section 615.5220 of proposed Subpart I would require the capitalization bylaws to set forth:

(1) The classes of stock authorized to be issued and the manner in which they can be issued, transferred, converted, and retired;

(2) For each class of stock, classes of persons to whom it may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(3) The number of shares and par value of stock authorized to be issued for each class of stock other than stock required to be purchased as a condition for obtaining a loan (which may be authorized in unlimited amounts to permit loan volume to increase without shareholder approval);

(4) The percentage amount of stock that will be required to be purchased as a condition for obtaining a loan (which may be more than but must not be less than 2 percent of the loan amount or $1,000, whichever is less);

(5) The amount of stock protected under section 4.9A of the 1971 Act, as amended, that will be required to be exchanged for voting stock issued under the new capitalization bylaws; and

(6) A statement that such equities are retirable at the sole discretion of the board of directors;

(7) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be made, which shall be consistent with cooperative principles; and

(8) The manner of allocating the capital requirements of the FCB among its owners and periodically equalizing the allocation.

Section 615.5230 of the proposed Subpart I would require the bylaws to reflect the cooperative priniciples of one-person-one-vote and equitable treatment of patrons. Under the

proposed paragraph (a), Farm Credit associations would be required to accord each holder of voting stock one vote regardless of the number of shares owned, except when voting on the issuance of preferred stock. In FCBs, each association/shareholder vote would be required to be weighted according to the number of the association's voting shareholders. This requirement would assure that the bank is cooperatively controlled by its ultimate owners, the borrowers. In addition, the bylaws of the FCBs would be required to reflect a weighting plan that would not discriminate against ACAs, which result from the merger of FLBAs and PCAs. The bylaws of both banks and associations would be required to permit every shareholder be entitled to vote in the election of each director.

Proposed paragraph (b) would require that the bylaws provide for the equitable treatment of all equityholders and would set forth provisions that must be included in the bylaws to assure such equitable treatment. The proposed regulation would require the issuance of preferred stock to be authorized by a majority vote of the shares of each class of stock affected by the preference, whether or not its members are otherwise entitled to vote. This modification of cooperative voting principles is necessary to protect the interests of holders of common stock and participation certificate holders. The proposed regulation would also require that shareholders be treated equitably with respect to the distribution of earnings and priority upon liquidation. Dividends would be required to be on a per share basis and without preference between holders of stock and holders of participation certificates, between members of a class, and between classes of common stock except that a class of common stock that resulted from the conversion of allocated surplus may be subordinate to other classes of common stock.[1]

Section 615.5240 of the proposed regulation sets forth the statutory requirement that the capitalization bylaws must enable the institution to meet the minimum permanent capital standards established by the FCA. Proposed paragraph (a) sets forth requirements that would have to be met in order for equities issued under the bylaws to qualify as permanent capital. These requirements are designed to assure that the equities issued under the bylaws are at risk and to distinguish them from debt. All equities would be required to be retirable at no more than book value and only at the discretion of the board (provided minimum permanent capital standards established by Subpart H of this Part are met) and not on a date certain or upon the happening of an event, such as repayment of the loan, or pursuant to an automatic retirement or revolvement plan. Dividends would be required to be payable only at the discretion of the board. Cumulative dividends could be paid only on preferred stock and only if they could be indefinitely deferred and any obligation to pay such dividends subordinated to the right of the holders of common stock and participation certificates to have their equities retired at book value not to exceed par upon liquidation. Disclosure of the nature of the equities as an investment at risk would have to be made pursuant to proposed § 615.5250.

Paragraph (b) of proposed § 615.5240 would require the capitalization bylaws of the FCB to allow the FCB, with the prior approval of the FCA, to require its owners to subscribe for additional capital when needed to honor the FCB's obligations under joint and several liability or to meet the FCB's capital requirements under Subpart H. The FCB would be required to take into account the financial condition of its owners in making such capital calls. This provision is similar to provisions in existing regulations for the FICB (currently found in § 615.5270), which mirror statutory provisions of the 1971 Act that were eliminated by the 1987 Act. However, since the 1987 Act did not change the basic nature of the relationship between the funding bank and direct lender association, the FCA believes that the owners of the FCB have an obligation to assure that the FCB has access to sufficient capital resources to honor its obligations under joint and several liability and meet its capital standards. The FCA believes that such a regulatory provision is necessary and appropriate to implement the joint and several liability provisions of section 4.4 of the 1971 Act, which allocates residual liability on the basis of assets. Since loans and discounts to direct lenders constitute a large portion of the FCBs' assets, such an allocation would be meaningless unless the FCBs have some access to the capital of their owners in the event the FCBs are unable to meet their statutory obligations from their own capital resources. The FCA proposes to require FCA approval for such capital calls to assure that the interests of the owners of the FCB are protected and that any such subscription requirements are equitably allocated.

Paragraph (c) of the proposed regulation would require that the capitalization bylaws to require that until minimum permanent capital standards established by the FCA are met, stock required to be purchased as a condition of obtaining a loan be purchased from the institution. The FCA believes such a requirement is necessary and appropriate to carry out the purposes of the 1987 amendment of the 1971 Act. Since stock is now transferable, it is possible for prospective borrowers to purchase their required number of qualifying shares from borrowers who have paid off their loans. Such a practice would make it even more difficult for institutions that do not meet the minimum standard to do so, since increasing volume without increasing stock levels would decrease the minimum permanent capital ratio. Such a practice could operate as a circumvention of the statutory prohibition against reducing permanent capital by retiring stock or distributing earnings, since stock that could not be retired because minimum permanent capital standards are not met could be transferred and allowed to count as qualifying shares. While the FCA has no objection to such a practice if capital standards are met, allowing it when they are not would exacerbate an already difficult situation for System institutions.

Section 615.5250 of the proposed regulation sets forth disclosure requirements for the issuance of equities, both for equities required to be purchased as a condition of obtaining a loan and for other sales of equities. For equities required to be purchased as a condition of obtaining a loan, the institution would be required to give the purchaser, prior to the loan closing, a copy of the institution's latest annual and quarterly reports to shareholders, a copy of the institution's capitalization bylaws, and a written description of the equity that describes the terms and conditions under which it is issued and its nature as an investment at risk and not a compensating balance. Similar disclosure would be required when a borrower is required to exchange protected stock for new at-risk stock issued under the new capitalization bylaws, except that no annual and

[1] In the recent mandatory merger of the Federal land banks and Federal intermediate credit banks, some institutions converted allocated surplus into a separate class of common stock which is not dividend bearing and continues to have the same subordinate position upon liquidation as the allocated surplus had. The FCA believes System institutions should have the flexibility to discontinue the practice of allocating surplus to members if they choose and thinks it appropriate that stock that results from conversions of allocated surplus retain the subordinate position allocated surplus had.

quarterly reports would be required since borrowers will have already received a copy of these reports. For other sales of equities, the institution would be required to submit a disclosure statement to the FCA for review and clearance 45 days prior to the proposed sale. Under the proposed regulation, no equities could be sold except through the use of such a statement that has been reviewed and cleared by the FCA. The disclosure would be required to contain all of the information required by 12 CFR Part 620 for the annual and quarterly reports to shareholders, as well as a description of the equity and the intended use of the proceeds of the sale and a copy of the institution's capitalization bylaws. The most recent annual and quarterly reports filed under Part 620 could be incorporated by reference in partial satisfaction of the disclosure requirements. The proposed regulation would allow the FCA to waive any or all of the disclosure requirements when the sale is to a single investor in a denomination of $100,000 or more if the sophistication of the investor warrants, provided the certificate evidencing the investment bears a legend that prohibits dividing the equity into smaller denominations without FCA approval. All disclosures would be required to include a statement that the equity may be retired only at the discretion of the board.

These proposed sections would replace existing §§ 615.5220, 615.5230, and 615.5240 of Subpart I and § 615.5250 of Subpart J.

Subpart J

Subpart J would be retitled, "Retirement of equities" to reflect its narrower focus after amendment. All of the provisions of Subpart J except § 615.5255 would be deleted, as they either are no longer appropriate after the 1987 Act, duplicative of statutory provisions, or incorporated into the proposed regulation. Section 615.5255 would be redesignated as § 615.5280, amended as described below and retitled, "Retirement in event of default." Although the specific equalization provisions of §§ 615.5270 and 615.5280 would be deleted, the FCA would expect the FCBs to continue to treat associations equitably. In view of the different types of association that may evolve in a district under the 1987 amendments of the 1971 Act, the FCA believes that the method of equalization is a matter that is best left to the board and shareholders of each institution and their capitalization bylaws.

Section 615.5260 of the proposed regulation would set forth provisions related to the retirement of "eligible borrower stock," which is defined in proposed paragraph (a) as equities that are protected under section 4.9A of the 1971 Act, as amended, and any equities for which such equities are exchanged in connection with a merger, consolidation, or other reorganization, or a transfer of territory. Proposed paragraph (a) would also set forth definitions of "eligible borrower stock," "retirement in the ordinary course of business," and "par value." For the purposes of the proposed regulations, "retirement in the ordinary course of business" would be defined to mean: (1) Retirement upon repayment of a loan or retirement under a retirement or revolvement plan in effect prior to January 6, 1988, or, for stock issued after that date, at the time the loan was made; and (2) retirements in the event of the borrower's default pursuant to § 615.5280. "Par value" would have the meaning set forth in section 4.9A of the Act.

Paragraph (b) of proposed § 615.5260 would restate the statutory requirements for an institution to retire eligible borrower stock at par (even if its book value is less than par) and to coordinate with the Assistance Board and the FAC when retiring eligible borrower stock that is impaired, as determined in accordance with generally accepted accounting principles (GAAP).

Paragraph (c) of proposed § 615.5260 would require FCB pass-through equities that are retired solely to enable an FLBA to retire eligible borrower stock, to be retired at par, and, if they are impaired, to coordinate their retirement with the Assistance Board and the FAC.

Paragraph (d) of proposd § 615.5260 would require the approval of the FCA for any out-of-the-ordinary-course-of-business retirement of eligible borrower stock.

Section 615.5270 of the proposed regulation would set forth the requirements for the retirement of equities other than eligible borrower stock. Proposed paragraph (a) would require equities other than eligible borrower stock to be retirable at not more than their book value, and only in the discretion of the board and not on a date certain and not upon the happening of an event (such as repayment of a loan) or pursuant to an automatic retirement or revolvement plan. This paragraph reflects the FCA's judgment that the effect of the capitalization provisions of the 1987 Act is to require that all equities issued after October 5, 1988, be issued in such a manner as to qualify as permanent capital. Proposed paragraph (b) would prohibit the retirement of such other equities if after their retirement the institution would not meet minimum permanent capital standards established under Subpart H of this part.

Section 615.5280 of the proposed regulation would set forth the current provisions of § 615.5255 relating to the retirement of equities when the borrower's loan is in default and would incorporate a similar provision currently found in § 615.5260 for BCs. A new paragraph (a) would be added to incorporate the requirement to retire eligible borrower stock at par and a new paragraph (c) would be added to incorporate the BC provision. Subsequent paragraphs would be renumbered accordingly. Paragraph (b) of exiting § 615.5255 would be redesignated as paragraph (c) and amended to delete the reference to production credit associations and to exclude Federal land bank associations that are direct lenders. This paragraph currently requires that any retirements in event of default by Federal land bank associations and production credit associations be made with the specific prior approval of or in accordance with procedures prescribed by the district Federal land bank and Federal intermediate credit bank, respectively. The FCA believes that the effect of the 1987 amendments is to allow associations that are direct lenders more autonomy. FLBAs that are not direct lenders, on the other hand, appear to be more in the nature of branch lending offices and the application of borrower stock to the borrower's indebtedness at the association level may in some cases require a retirement of bank stock. However, since retirement of bank stock may not always be required, the proposed revision would allow the FCBs, at their option, to require that such retirements either have the FCB's prior approval or be made pursuant to the procedures prescribed by the FCB.

Existing paragraphs (c) and (d) would be unchanged, but would be redesignated as paragraph (e) and (f), respectively. The FCA has previously proposed to add paragraphs (e), (f), and (g) to existing § 615.5255 in connection with its borrower rights regulations (53 FR 16937), and will be taking action on that proposal in the near future. If that proposal is adopted in final form, the adoption of this proposed amendment would redesignate paragraphs (e), (f), and (g) as paragraphs (g), (h), and (i), respectively.

Subpart K—Surplus and Reserves

The FCA proposes to delete all of the existing provisions of Subpart K. Most of the deleted provisions relate to requirements to establish allowances for

loan losses, which duplicate either the statutory provisions or the requirement under GAAP and 12 CFR Part 621 of FCA regulations to maintain an adequate allowance for losses.

The FCA proposes to revise § 615.5330 to require BCs to add at least 10 percent of net earnings after taxes to unallocated surplus each year until such surplus reaches 50 percent of the minimum permanent capital required by Subpart H of this part. Since it has been the practice of most banks for cooperatives to revolve nearly all capital out over a 5 to 7 year period, the resulting level of capital not allocated to individual borrowers is relatively small in relation to the potential unreserved loss on many individual loans. An unexpected loss may impair the allocated equities of a BC and have an immediate effect on the balance sheet of its members. This could have a pronounced effect on the confidence in the bank and result in borrower flight. The proposed regulatory requirement would be lower than equivalent standards adopted for the System by the FCCA. The Systemwide Financial Standards adopted by the FCCA set a standard for return on average total assets of 75 percent, and a maximum debt-to-capital ratio of 12 to 1. For banks, the standard for contributions to unallocated surplus is one-tenth of 1 percent of average assets until the unallocated surplus reaches an amount equal to stock and allocated surplus. If the standard return on assets is achieved, this would translate into an addition to unallocated surplus of approximately 15 percent of net earnings. In addition, many BCs have already embraced a 10 percent addition standard and in fact maintained such a minimum addition in 1987. The regulatory requirement would be lower and would apply regardless of the return on assets achieved by the institution.

Subpart L—Distribution of Earnings

The FCA proposes to delete all of the provisions of Subpart L and reserve the section. The deleted provisions relate to the payment of patronage, and in the case of the FLB and FLBAs are based on statutory provisions eliminated by the 1987 Act. The FCA believes that under the 1971 Act as amended by the 1987 Act, the payment of patronage is a matter that is more appropriately left to an institution's board of directors and its shareholders in the capitalization bylaws, subject to proposed FCA regulations requiring that such payments be made in accordance with cooperative principles, including the principle that all patrons should be treated equitably. In addition, section 4.3A(d) of the 1971 Act, as amended, prohibits the payment of patronage if it would reduce the institution's permanent capital below the minimum permanent capital standards established by the FCA. The FCA believes that this statutory prohibition, the minimum permanent capital standards established by the FCA, and the proposed regulations requiring equitable treatment of patrons provide sufficient guidance in this area.

In the case of BCs, the statutory basis for the regulations is unchanged except for deletions of FCA prior approvals. The FCA believes the statutory provisions, the minimum permanent capital standards, the proposed regulations requiring equitable treatment of patrons, and the proposed Subpart K will provide adequate guidance for BCs.

Subpart M—Payment of Dividends

The FCA proposes to delete and reserve Subpart M. So long as an institution has adequate capital, the FCA's primary regulatory interest in the payment of dividends is focused on dividend rights and preferences insofar as they have some bearing on the status of equities as permanent capital and the safety and soundness of the institution, and the equitable treatment of shareholders and participation certificate holders. These concerns are addressed in proposed Subpart I.

Subpart N—Association Supervision

The FCA proposes to delete and reserve Subpart N. This section directs bank boards to prescribe policies and regulations and guidelines necessary for the banks to discharge their supervisory responsibilities over the financial and fiscal affairs of the associations and to monitor compliance with such policies, regulations and guidelines. Because the 1987 Act encourages greater autonomy on the part of associations that are direct lenders and provides an opportunity for all associations to become direct lenders, the FCA believes that the FCBs and associations should have greater flexibility to work out an effective relationship between them under the provisions of the 1971 Act as amended by the 1987 Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, Part 615 of Chapter VI of Title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 4.3, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2243, 2252, 2278b, 2278b–6.

2. Subpart I is revised to read as follows:

Subpart I—Issuance of Equities

Sec.
615.5220 Capitalization Bylaws.
615.5230 Implementation of cooperative principles.
615.5240 Permanent capital requirements.
615.5250 Disclosure requirements.

Subpart I—Issuance of Equities

§ 615.5220 Capitalization Bylaws.

The board of directors of each Farm Credit institution shall, pursuant to section 4.3A of the Farm Credit Act of 1971, adopt capitalization bylaws, subject to the approval of a majority of its voting shareholders present and voting, or voting by written proxy, at a duly authorized shareholders' meeting, that set forth:

(a) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan may be authorized to be issued in unlimited amounts;

(d) The percentage amount of equities that will be required to be purchased from the institution as a condition for obtaining a loan, which may be more than, but shall be not less than, 2 percent of the loan amount or $1,000, whichever is less;

(e) The amount of stock protected under section 4.9A of the Act that existing borrowers will be required to exchange for stock issued under capitalization bylaws adopted pursuant to section 4.3A of the Act;

(f) The manner in which stock will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent

capital adequacy standards established in Subpart H of this part are met;

(g) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be made, which shall be in accord with cooperative principles; and

(h) The manner in which the capitalization requirements of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

§ 615.5230 Implementation of cooperative principles.

(a) The bylaws shall provide for voting rights based upon cooperative principles, except as otherwise required by statute or regulation, and shall include, at a minimum, the following provisions:

(1) For associations—

(i) A provision according each voting shareholder one vote, except as modified by paragraph (b) of this section.

(ii) A provision according each voting shareholder the right to vote in the election of each director.

(2) For Farm Credit Banks—

(i) A provision according the vote of each association a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) A provision according each voting shareholder the right to cast its vote in the election of each director.

(b) Bylaw provisions shall provide for the equitable treatment of all shareholders and participation certificate holders. To assure such equitable treatment, the bylaws shall, at a minimum, provide for the following:

(1) The authorization to issue preferred stock other than preferred stock to be issued to the Farm Credit System Financial Assistance Corporation shall be approved by a majority of the shares of each class of stock affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock shall be on a per share basis and without preference between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock that results from the conversion of allocated surplus may be subordinated to other classes of common stock in the payment of dividends.

(3) Patronage refunds may be paid, consistent with cooperative principles, on a proportionate basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis and shall ensure that each patron of the institution receives its fair share of all of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

§ 615.5240 Permanent capital requirements.

The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under Subpart H of this Part and the total capital standard established by the board of directors of the institution.

(a) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan adopted by the board of directors.

(ii) Retirement must be at not more than book value.

(iii) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan adopted by the board of directors.

(ii) Retirement must be at not more than book value.

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative, provided the obligation to pay can be indefinitely deferred so long as no dividends are paid to holders of common stock and participation certificates or patronage refunds paid to patrons, and provided further that such obligation is subordinated to the rights of the holders of common stock and participation certificates to have their stock or participation certificates retired at book value not to exceed par upon liquidation.

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(b) The capitalization bylaws of the Farm Credit Bank shall allow the Farm Credit Bank, with the prior approval of the Farm Credit Administration, to require the holders of its common stock and participation certificates to subscribe for such additional capital as may be needed by the Farm Credit Bank to meet its capital requirements under Subpart H of this part or its joint and several liabilities under section 4.4 of the Act. In making such a capital call, the Farm Credit Bank shall take into account the financial condition of the holders of its common stock and participation certificates.

(c) The capitalization bylaws of the banks for cooperatives and associations shall require that until the institution meets the minimum permanent capital standard established by the FCA, all equities required to be purchased as a condition for obtaining a loan shall be purchased from the institution.

§ 615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR Part 620;

(2) The institution's most recent quartely filed under 12 CFR Part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued, including an express disclosure that the equity is retirable only at the discretion of the board of directors and is an investment that is at risk and not a compensating balance.

(b) Prior to any mandatory exchange of eligible borrower stock, as defined in § 615.5260(a)(1), for stock issued under capitalization bylaws required under § 615.5220, equity holders shall be provided with the disclosures required by paragraph (a)(3) and (4) of this section.

(c) Other equities.

(1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR Part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed and cleared by the Farm Credit Administration.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (b)(1) of this section to the Farm Credit Administration for review and clearance. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under Subpart H and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) The Farm Credit Administration may waive any or all of the disclosure requirements of this paragraph (b) when a single investor acquires $100,000 or more of a single class of equity if the sophistication of the purchaser warrants, provided that any certificate that may be issued evidencing such an equity states on its face in boldface type *"The denomination of this equity may not be reduced to less than $100,000 without the prior approval of the Farm Credit Administration."*

(c) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions or other financing institutions having a discount or lending relationship with the selling Farm Credit System institution.

3. Subpart J is revised to read as follows:

Subpart J—Retirement of Equities

Sec.
615.5260 Retirement of eligible borrower stock.
615.5270 Retirement of other equities.
615.5280 Retirement in event of default.

Subpart J—Retirement of Equities

§ 615.5260 Retirement of eligible borrower stock.

(a) *Definitions.* For the purpose of this Subpart the following definitions shall apply:

(1) "Eligible borrower stock" means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 5, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or transfer of territory. "Eligible borrower stock" does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower stock is voluntarily exchanged in consideration of a benefit to the shareholder, such as early retirement.

(2) "Retirement in the ordinary course of business" means:

(i) Retirement upon repayment of a loan or under a retirement or revolvement plan in effect prior to January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made; and

(ii) Retirement pursuant to § 615.5280.

(3) "Par value" means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities (except equities unable to be retired in connection with a liquidation occurring after January 1, 1983, and before January 1, 1988), face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out or order pursuant to § 615.5280 or othewise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par. If the book value is less than par, such retirement shall be coordinated with the Farm Credit System Assistance Board and the Farm Credit System Financial Assistance Corporation.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par. If the book value is less than par, such retirement shall be coordinated with the Farm Credit System Assistance Board and the Farm Credit System Financial Assistance Corporation.

(d) No eligible borrower stock shall be retired other than in the ordinary course of business without the prior approval of the Farm Credit Administration.

§ 615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retirable only in the discretion of the board and not on a date certain or upon the happening of an event such as repayment of a loan, or pursuant to an automatic retirement or revolvement plan, and shall be retired at not more than their book value.

(b) No equities shall be retired unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established under Subpart H of this part.

§ 615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, or agricultural credit association is in default, such institution may, but shall not be required to, retire such stock, participation certificates or other equities, other than eligible

borrower stock as defined in § 615.5260(a)(1), at book value not to exceed par, all or part of the equity owned by such borrower in total or partial liquidation of the debt.

(c) When the debt of a holder of eligible borrower stock issued by a bank for cooperatives is in default, the bank for cooperatives may, but shall not be required to retire such stock, in total or partial liquidation of the debt. If such stock qualifies as eligible borrower stock, it shall be retired at par, as defined in § 615.5260(a)(3). All other stock shall be retired at fair market value.

(d) Any retirements made under this section by a Federal land bank association that is not a direct lender shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Farm Credit Bank.

(e) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraph (c) of this section, the institution shall provide the borrower with written notice of the following matters:

(1) A statement that the association has declared the borrower's loan to be in default;

(2) A statement that the association will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the association;

(4) A statement of the amount of the outstanding debt that will be owed to the association after the retirement of the borrower's equities; and

(5) The date on which the association will retire the equities of the borrower.

(f) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

4. Subpart K is revised to read as follows:

Subpart K—Surplus and Reserves

Sec.
615.5330 Banks for cooperatives.

Subpart K—Surplus and Reserves

§ 615.5330 Banks for cooperatives.

Each bank for cooperatives shall add to the unallocated surplus account annually an amount not less than 10 percent of net earnings after taxes until such time as the unallocated surplus equals half of the minimum permanent capital requirements established under Subpart H of this part.

(Subpart L) [Reserved]

§§ 615.5350–615.5370

(Subpart M) [Reserved]

§§ 615.5390–615.5430

(Subpart N) [Reserved]

§ 615.5440

* * * * *

5. Subparts L, M, and N are removed and reserved.

Date: August 30, 1988.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 88–20046 Filed 9–1–88; 8:45 am]
BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–NM–99–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection of the fuselage skin lap splice between body stations (BS) 400 and 520 at stringers S–6L and S–6R. This proposal is prompted by a recent report of multiple adjacent cracks found on one airplane. This condition, if not corrected, could lead to sudden loss of cabin pressurization and the inability to withstand fail-safe loads.

DATES: Comments must be received no later than October 27, 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–99–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. Dan R. Bui, Airframe Branch, ANM–120S; telephone (206) 431–1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific 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–99–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The manufacturer has notified the FAA of the finding of cracks in the fuselage skin lap splice between body station (BS) 400 and BS 520, at stringers S–6L and S–6R, on one Boeing Model 747 series airplane. The cracks initiated in the fastener countersink and propagated along the fastener line due to fatigue. Cabin pressurization was the primary loading source for the fatigue cracking. Failure to detect and repair a skin crack in this area prior to reaching critical crack length, may result in in-flight depressurization of the airplane and the inability of the airplane to withstand fail-safe loads.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2302, dated June 2, 1988, which defines the specific inspection procedures to be used to check for cracks in the fuselage skin lap splice between BS 400 and BS 520 at stringers

S-6L and S-6R on certain Boeing Model 747 airplanes. A modification is described in the service bulletin which consists of replacing the top row of fasteners with protruding head fasteners or installing an external doubler. Inspections are to continue after modification.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and repair, if necessary, of certain Boeing Model 747 series airplanes, in accordance with the service bulletin previously mentioned.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 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 $64,000.

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 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 adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, listed in Boeing Alert Service Bulletin 747-53A2302 dated June 2, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a failure of the fuselage skin lap splice between body station (BS) 400 and BS 520 at stringer S-6L and S-6R, accomplish the following:

A. Conduct close visual and high frequency eddy current (HFEC) inspection of the fuselage skin lap splice between BS 400 and BS 520, at stringers S-6L and S-6R for cracking, in accordance with Boeing Alert Service Bulletin 747-53A2303, dated June 2, 1988, at the following thresholds:

1. Within the next 100 landings after the effective date of this AD for airplanes that have accumulated 16,000 or more landings as of the effective date of this AD.

2. Within the next 1,000 landings after the effective date of this AD or prior to the accumulation of 16,100 landings, whichever occurs first, for airplanes that have accumulated between 12,000 and 16,000 landings, as of the effective date of this AD.

3. Prior to the accumulation of 13,000 landings for airplanes that have accumulated 12,000 or fewer landings as of the effective date of this AD.

Adequate lighting must be used for this inspection. The eddy current inspections may be conducted without removal of the paint, provided the paint does not interfere with the inspections. Paint must be removed, using an approved chemical striper, in any situation where the inspector determines that the paint is interfering with the proper functioning of the inspection instrument.

B. On airplanes which have been modified to the stretched-upper-deck configuration, as identified in Boeing Alert Service Bulletin 747-53A2302, dated June 2, 1988, the accumulated landing threshold for compliance with paragraph A., above, is measured from the time of the stretched-upper-deck modification.

C. If no cracking is detected, repeat the close visual and HFEC inspections required by paragraph A., above, at intervals not to exceed 5,000 landings.

D. If cracks are detected, accomplish the preventive modification of the affected lap splice, in accordance with Boeing Alert Service Bulletin 747-53A2302, dated June 2, 1988, prior to further pressurized flight, except as noted in paragraph E., below.

E. If there are no more than three cracks that are less than 0.10 inch in length from BS 340 to BS 520, as defined in the Boeing Alert Service Bulletin 747-53A2302, dated June 2, 1988, per lap splice, accomplish preventive modification of the affected lap splice in accordance with Boeing Alert Service Bulletin 747-53A2302, dated June 2, 1988, prior to the accumulation of 1,500 additional landings, provided that the non-repaired area is reinspected in accordance with paragraph A., above, at intervals not to exceed 100 landings.

F. For airplanes incorporating the preventive modification, as described in Boeing Alert Service Bulletin 747-53A2302, dated June 2, 1988, accomplish the inspections required by paragraph A., above, prior to the accumulation of 10,000 landings after the modification and thereafter at intervals not to exceed 5,000 landings. If cracks are found, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region, or FAA Designated Engineering Representatives (DER) of The Boeing Company, prior to the next pressurized flight.

G. 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.

H. 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.

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 August 6, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88-19957 Filed 9-1-88; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 88-NM-110-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, which would require replacement or

repetitive leakage checks of aileron power control units which have accumulated 18,000 or more hours time in service. This proposal is prompted by reports of aileron power control units binding due to piston seal and flange failure. This condition, if not corrected, could lead to immobilization of the ailerons and partial loss of controllability of the airplane.

DATES: Comments must be received no later than October 27, 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-110-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 the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. 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-110-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Two operators of Boeing Model 727 airplanes have reported three occurrences of aileron control wheel binding due to internal damage in the aileron power control unit (PCU). Subsequent investigation by the manufacturer indicates that the damage was due to deterioration of the hydraulic piston seals, which allowed hydraulic pressure to load and cause fatigue fracture of the piston seal retainer flanges, leading to binding of the PCU output shaft. Available service experience indicates that seal deterioration has been observed on units that have accumulated 19,000 or more hours time in service. Binding of the PCU output shaft results in immobilization of the ailerons in the position they occupied when PCU binding occurred. Limited roll control can be regained with spoilers by applying opposite control wheel movement, overriding a disconnect device. All reported instances of control wheel binding have occurred on the ground during control checks, but PCU failure can occur at any time with the control wheel in any position. This condition, if not corrected, could lead to immobilization of the ailerons and partial loss of controllability of the airplane.

Service history and testing by the manufacturer indicate that the seal failure which causes the eventual PCU binding can be expected on units with more than 18,000 hours time in service. Periodic replacement will preclude PCU failure from this source. Additionally, failed seals can be detected by an internal leakage test. If this test is performed at 2,500 hour intervals, and units which fail the test are replaced, the seal failure will not have time to cause flange failure and PCU binding. For these reasons, either a periodic replacement or a repetitive leakage test will provide assurance that aileron PCU binding will not occur.

An overhaul procedure has been developed by the PCU manufacturer which eliminates the pressure rise which occurs when the piston seals fail; hence, PCU's which have been overhauled in this manner do not require replacement or leakage tests.

The FAA has reviewed and approved Boeing Alert Service Bulletin 727-27A0220, Revision 1, dated July 28, 1988, which describes periodic replacement or internal leakage checks of PCU's; and National Water Lift Control Systems Service Bulletin 27-21-1/200, dated April 8, 1988, which describes the overhaul of aileron power control units.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require either replacement or repetitive testing of certain aileron power control actuators.

It is estimated that 1,246 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to replace the PCU, and that the average labor cost would be $40 per manhour. If a bench internal leakage test were performed, an additional 3 manhours per airplane would be required. Based on these estimates, replacement only would cost $149,500 per year. If the leakage test only were accomplished, that estimate increases to $250,000 per year. The cost to rebuild the PCU after removal is estimated to be $6,545. Based on these figures, the total cost impact of the AD on U.S. operators would be between $300,000 and $8,300,000 depending on the option selected by the operators.

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 Excutive 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, Boeing Model 727 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 adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent binding of the aileron control wheel caused by internal damage in the aileron power control unit (PCU), accomplish the following:

A. Prior to the accumulation of 18,000 hours time in service on the PCU since new or overhauled with new seals, or within the next 3,000 hours time in service on the PCU after the effective date of this AD, whichever occurs later, accomplish either of the following, in accordance with Boeing Alert Service Bulletin 727–27A0220, Revision 1, dated July 28, 1988:

1. Replace any aileron power control unit with a PCU which has been overhauled including new piston seals or one which has accumulated less than 18,000 hours time in service. Continue to replace any PCU prior to the accumulation of 18,000 hours time in service on the PCU.

2. Perform a hydraulic bench internal leakage test on the aileron power control unit. Before further flight, replace any PCU which fails the test. Repeat the hydraulic bench internal leakage test at intervals not to exceed 2,500 hours time in service.

Note: If the time in service on the aileron power control unit cannot be accurately determined, use the airplane time in service for determining compliance time for this AD.

B. Overhaul of the aileron power control unit in accordance with National Waterlift Service Bulletin 27–21–1/200, dated April 8, 1988, constitutes terminating action for the repetitive replacement or internal leakage test required by paragraph A., above.

C. 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.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for accomplishment of the rework required by 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 Commerical Airplanes, P.O. Box 3707, Seattle, Washington, 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on August 26, 1988.

M.C. Beard,

Director, Office of Airworthiness.

[FR Doc. 88–19958 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16

[Docket No. RM87–33–000]

Hydroelectric Relicensing Regulations Under the Federal Power Act

Issued August 26, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; order granting request for reply comment period.

SUMMARY: On May 24, 1988, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking in Docket No. RM87–33 (53 FR 21,844 (June 10, 1988)), proposing to revise its regulations governing relicensing of hydroelectric projects. In this order, the Commission establishes a reply comment period of 30 days following the expiration of the initial comment period on September 8, 1988. Reply comments, not to exceed 15 pages in length, may be submitted to the Commission on or before October 11, 1988.

DATES: Initial comments are due September 8, 1988. Reply comments are due October 11, 1988.

ADDRESS: All filings should refer to Docket No. RM87–33–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Robert E. Gian, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the context of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

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

Order Granting Request for Reply Comment Period

The Federal Energy Regulation Commission (Commission) issued a notice of proposed rulemaking (NOPR) in this docket on May 24, 1988. In that NOPR, the Commission proposed to revise its regulations governing the relicensing of hydroelectric power projects and required the filing of written comments no later than September 8, 1988. Edison Electric Institute has requested that the Commission establish a reply comment period of 30 days during which interested parties may file replies to comments filed by others. The Commission grants that request and will permit the filing of reply comments during a 30-day period following the expiration of the initial comment period.

Interested persons may inspect or copy initial comments during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426 or may telephone the Commission's Public Reference and Files Maintenance Branch at (202) 357–8118 to learn how to obtain copies of the comments in this rulemaking docket. Reply Comments must be in writing and an original and 14 copies must be received by October 11, 1988. Reply Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM87–33–000. Reply Comments must not exceed 15 pages in length.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20034 Filed 9–1–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 603

Federal-State Unemployment Compensation Program; Income And Eligibility Verification System

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule; amendment.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend the regulations for implementing the State Income and Eligibility Verification System. The amendment will provide that State unemployment insurance information related to child support enforcement shall be provided upon request and at cost to the Federal Parent Locator Service (FPLS).

DATE: Written comments must be received by the close of business on October 3, 1988.

ADDRESS: Comments should be mailed to Mary Ann Wyrsch, Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S4231, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Barbara Ann Farmer, Director, Office of Program Management, Unemployment Insurance Service, (202) 535–0610 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Sections 303(f) and 1137 (a) and (b) of the Social Security Act (SSA) require States to establish an income and eligibility verification system (SIEVS) for the exchange of information to verify eligibility for, and the amount of, benefits available under several Federally assisted programs, including the Federal-State Unemployment Compensation Program. SSA Section 1137(a)(4)(B) makes mandatory the use of SIEVS information "to assist in the child support program under Part D of title IV * * * of the SSA. The Federal Parent Locator Service (FPLS) is a key operating agency in the child support program under Part D of Title IV. This statutory language demonstrates that Congress intended the FPLS, in addition to the State and local child support enforcement agencies (which currently have access to SIEVS information under § 603.2(d)(5)), to have access to such information as well. To ensure that the regulations reflect the full intent of Congress with respect to child support enforcement, the Department is amending section 603.2(d)(5) to include the FPLS, as well as State and local child support enforcement agencies, as an agency authorized to request wage and claim information from State unemployment compensation agencies under § 603.5.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 535–0600 (this is not a toll free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), and have been assigned OMB control number 1205–0238.

Regulatory Flexibility Act

The Department believes that this final rule will have no "significant economic impact on a substantial number of small entities" under 5 U.S.C. 605(b). This proposed rule amends the regulations for the State Income and Eligibility Verification System and affects only the States, which are not within the definition of "small entity" under 5 U.S.C. 601(6). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 603

Employment and Training Administration, Labor, and Unemployment Compensation.

Words of Issuance

For the reasons set forth in the preamble, it is proposed that 20 CFR Part 603 be amended as set out below.

Signed at Washington, DC on August 30, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

PART 603—INCOME AND ELIGIBILITY VERIFICATION SYSTEM

1. The authority citation for Part 603 is amended to read as follows:

Authority: 42 U.S.C. 1302; Secretary's Order No. 4–75 (40 FR 18515).

2. Section 603.2 is amended by revising paragraph (d)(5) to read as follows:

§ 603.2 Definitions.

* * * * *

(d) "Requesting agency" means:

* * * * *

(5) Any State or local child support enforcement agency charged with the responsibility of enforcing child support obligations under a plan approved under Part D of Title IV of the Social Security Act, and the Federal Parent Locator Service established under the provisions of section 453 of such Part D; and

* * * * *

§ 603.7 [Amended]

3. In paragraph (a)(6)(ii) of § 603.7 remove the words "State agency" and add, in their place, the words "requesting agency".

[FR Doc. 88–20072 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL–934–86]

Income Taxes; Branch Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed Income Tax Regulations relating to the branch tax. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing temporary regulations relating to these matters. The text of these temporary regulations also serves as the

comment document for this proposed rulemaking.

DATES: These regulations are proposed to be effective for taxable years beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 1, 1988.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, (Attention: CC:LR:T, INTL–934–86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard M. Elliott 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 (Attn: CC:LR:T, INTL–934–86) (202–566–6457, 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 reivew in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). 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 Internal Revenue Service, with copies to the Internal Revenue Service, Washington, DC 20224, Attention: IRS Reports Clearance Officer TR:FP.

The collection of information in this regulation is in §§ 1.884–1T(d)(11), 1.884–2T(a)(2), 1.884–2T(b), 1.884–2T(c)(2), 1.884–2T(d)(1), 1.884–2T(d)(4), 1.884–2T(d)(5), 1.884–4T(b)(7), 1.884–4T(c)(1), 1.884–5T(b)(3) through (7), 1.884–5T(d)(6), and 1.884–5T(f). This information is required by the Internal Revenue Service to ensure the correct computation of tax under section 884. This information will be used in audits of taxpayers. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 20,500 hours.

The estimated annual burden per respondent/recordkeeper varies from .5 to 10.5 hours depending on individual circumstances, with an estimated average of 6.5 hours.

Estimated number of respondents and/or recordkeepers: 3000.

Estimated annual frequency of responses: Annually.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.884–0T through 1.884–2T, 1.884–4T, and 1.884–5T. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 602. For the text of the temporary regulations, see FR Doc. 88–19832 [T.D. 8223] published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Request for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and seven 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 to be held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Richard M. Elliott of the Office of the Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements. Proposed Amendments to the Regulations.

PARTS 1 AND 602—[AMENDED]

The temporary regulations, FR Doc. 88–19832 [T.D. 8223], published in the Rules and Regulations portion of this issue of the **Federal Register**, are hereby also proposed as final regulations under section 884 of the Internal Revenue Code of 1986.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–19833 Filed 8–29–88; 1:29 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–023]

Virginia State Plan; Eligibility for Final Approval Determination; Comment Period and Opportunity To Request Public Hearing

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed final State plan approval; request for written comments; notice of opportunity to request informal public hearing.

SUMMARY: This document gives notice of the eligibility of the Virginia State occupational safety and health plan, as administered by the Virginia Department of Labor and Industry, for determination under section 18(e) of the Occupational Safety and Health Act of 1970 as to whether final approval of the State plan should be granted.

If an affirmative determination under section 18(e) is made, Federal standards and enforcement authority will no longer apply to issues covered by the Virginia plan. This notice announces that OSHA is soliciting written public comment regarding whether or not final State plan approval should be granted, and offers an opportunity to interested persons to request an informal public hearing on the question of final State plan approval.

DATES: Written comments requests for a hearing must be received by October 7, 1988.

ADDRESS: Written comments or requests for a hearing should be submitted, in quadruplicate, to the Docket Officer, Docket No. T–023, Room N2439 Rear, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs.

Occupational Safety and Health Administration, U.S. Department of Labor, Room N3649, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*, (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State plan submission and approval are set forth regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are at least as effective as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this detemination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period a provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a three-year period (29 CFR 1902.2(b)]. The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34].

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)].

A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)]. Procedures for section 18(e) determinations are found at 29 CFR Part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a 1978 Court Order by the U.S. District Court for the District of Columbia (*AFL-CIO* v. *Marshall*, C.A. No. 74-406), pursuant to a U.S. Court of Appeals decision, that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

A final requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final approval.

History of the Virginia Plan and of Its Compliance Staffing Benchmarks.

Virginia Plan

On December 18, 1972, Virginia submitted an occupational safety and health plan in accordance with section 18(b) of the Act and 29 CFR Part 1902, Subpart C, and on April 11, 1973, a notice was published in the **Federal Register** (38 FR 9194) concerning the submission of the plan, announcing that initial Federal approval of the plan was at issue and offering interested persons 30 days in which to submit data, views and arguments in writing concerning the plan.

Comments addressing specific areas of the Virginia plan, including alleged deficienices, were received from the Virginia State Association of Professional Fire Fighters; Mary A. Marshall, Member of the Virginia House of Delegates; Harold Gordon of Gordon and Healy; the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); and the Virginia State AFL-CIO. Following review of the Virginia plan, the public comments, and the results of discussions with the State, several modifications and clarifications were received from the State.

Plan review and a subsequent determination as to effectiveness, required under section 18(c) of the Act and Subpart B of 29 CFR Part 1902, disclosed several reasons for determining that the Virginia plan as submitted, which relied primarily on criminal enforcement procedures, was not "at least as effective" as the Federal civil enforcement scheme. Consequently, the Assistant Secretary initiated formal proceedings in accordance with section 18(d) of the Act and 29 CFR 1902.19(a) to reject the plan. A Notice of the Proposed Rejection and Notice of Hearing was published in the **Federal Register** (39 FR 24844, August 1, 1974) which fully described the ramifications of the State's reliance on a criminal enforcement process and the Assistant Secretary's conclusions regarding the resulting lack of effectiveness of the proposed Virginia program in comparison to Federal enforcement procedures. Although an opportunity was given for a public hearing on the rejection proceeding, only representatives of the District of Columbia requested permission to appear, and that request was subsequently withdrawn.

In view of the complexity of the subject matter involved in the proposed rejection, Requests for Admissions, Interrogatories and Answers to Interrogatories were exchanged between the parties to the proceeding. Before the commencement of a formal hearing on the proposed rejection, the Virginia General Assembly, in its 1975 regular session, amended section 40.1-49.1 of the Code of Virginia (1950) which serves as the enforcement portion of the enabling legislation. On June 16, 1975, the U.S. Department of Labor filed a motion to dismiss the proposed rejection on the grounds that the amended legislation, which provided for civil rather than criminal court review of contested enforcement actions and the

right of employees to participate as parties in those proceedings, was in the process of being reviewed for possible approval and had rendered moot the proceeding on which the rejection was based. To this end, pursuant to section 18(c) of the Act and 29 CFR 1902.12, the Assistant Secretary published for public comment in the **Federal Register** (40 FR 25741, June 18, 1975) a notice of Submission of Modifications to the Developmental Plan which recognized that the 1975 amendments appeared substantially to remove the basis for the proposed rejection. Public comments to this notice were received from Area 4, United Paper Workers International Union, AFL–CIO. There were no requests for a public hearing.

Prior to the date scheduled for argument on whether the proposed rejection proceeding should be dismissed, the Assistant Secretary and the Virginia Commissioner of Labor and Industry agreed upon Consent Findings, confirmed by a subsequent Consent Order, notice of which was published in the October 30, 1975 **Federal Register** (40 FR 50584), to suspend the proposed rejection proceedings pending the outcome of OSHA's review of the amended Virginia plan.

Although the 1975 legislative amendments appeared to resolve many of the objections to Virginia's enforcement process, the Department of Labor's review tentatively determined that the Virginia plan still did not provide enforcement procedures "as effective as" their Federal counterparts. Discussions and meetings between State and Federal representatives, however, resulted in several administrative commitments and legislative proposals by Virginia in response to the concerns expressed by Federal reviewers. The 1976 session of the Virginia General Assembly enacted further amendments to the State's enabling legislation. On June 21, 1976, the State formally submitted its revised plan, including the amended enabling legislation, to the Assistant Secretary. As noted above, the plan included provisions for the review of contested cases by the Virginia civil court system whereas Federal OSHA utilizes an administrative review process.

On September 28, 1976, the Assistant Secretary published a **Federal Register** notice granting approval of the Virginia plan as a developmental plan under section 18(b) of the Act (41 FR 42655). The plan provides for a program patterned in most respects (other than its procedures for contested cases) after that of the Federal Occupational Safety and Health Administration.

The Virginia plan covers all occupational safety and health issues except private sector maritime employment and employment on military facilities. The Virginia Department of Labor and Industry is designated as having responsibility for administering the plan throughout the State. At the time of initial plan approval, the responsibility for health standards enforcement rested with the Bureau of Occupational Health in the Virginia Department of Health. Effective July 1, 1985, the Bureau of Occupational Health was transferred from the Department of Health to the Department of Labor and Industry. The plan provides for the adoption by Virginia of standards which are "at least as effective" as Federal occupational safety and health standards. In most cases the State standards are identical to the Federal. The plan requires employers to furnish employment and place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated by the State agency. Employees are required to comply with all standards and regulations applicable to their conduct. The plan contains provisions similar to Federal procedures governing emergency temporary standards; imminent danger proceedings; coverage under the general duty clause; variances; safeguards to protect trade secrets; protection of employees against discrimination for exercising their rights under the plan; and employer and employee rights to participate in inspection and review proceedings. Appeals of citations and penalities are filed with the Commissioner of Labor and Industry and are heard by the General District Courts of Virginia, which are located in each Virginia county and in the independent cities. (Although the General District Courts are not courts of record, the 1979 session of the Virginia General Assembly enacted amendments to Title 40.1 of the Code of Virginia to require the Virginia courts to issue written orders based on findings of fact and conclusions of law in cases involving the contest of citations and penalties related to violations of occupational safety and health standards.) Decisions of the General District Courts may be appealed to the Virginia Circuit Courts. Decisions of the Circuit Courts may be appealed to the Virginia Supreme Court.

The notice of initial approval noted a few additional distinctions between the Federal and Virginia programs. The State does not cover private sector maritime employment or military facilities. As indicated above, unlike the Federal administrative process for the review of contested cases, in Virginia, General District Courts hear formal contests of penalties and/or citations for safety and health violations. Appeals of District Court determinations are heard de novo by the State Circuit Courts.

The Assistant Secretary's initial approval of the Virginia developmental plan, a general description of the plan, a schedule of required developmental steps, and a provision for discretionary concurrent Federal enforcement during the period of initial approval were codified in the Code of Federal Regulations (29 CFR Part 1952, Subpart EE; 41 FR 42655, September 28, 1976). A minor correction to the approval notice was published on February 25, 1977 (42 FR 10989). As a result of the approval of the Virginia State plan, the Assistant Secretary published a notice announcing the Dismissal of Rejection Proceedings against the Virginia plan (41 FR 56412, December 28, 1976).

In accordance with the State's developmental schedule, all major structural components of the plan were put in place and documentation submitted for OSHA approval on or before September 23, 1979. These "developmental steps" included amendments to Title 40.1 of the Code of Virginia, promulgation of State occupational safety and health standards essentially identical to Federal standards and establishment of a public employee program. In completing these developmental steps, the State developed and submitted for Federal approval all components of its program including, among other things, legislative amendments, a judicial system of review for contested cases, a merit staffing system, regulations for inspections, citations and proposed penalties, recordkeeping and reporting regulations, a voluntary compliance program, including on-site consultation services, and a safety and health poster for private and public employees.

These submissions were carefully reviewed by OSHA; after opportunity for public comment and modification of State submissions, where appropriate, the major plan elements were approved by the Assistant Secretary as meeting the criteria of section 18 of the Act and 29 CFR 1902.3 and 1902.4. The Virginia subpart of 29 CFR Part 1952 was amended to reflect each of these approval determinations (see 29 CFR 1952.104).

On October 1, 1981 an operational status agreement was entered into

between Federal OSHA and Virginia. A **Federal Register** notice announcing the operational status agreement was published on June 11, 1982 (47 FR 25323). Under the terms of the agreement, OSHA voluntarily suspended the application of concurrent Federal enforcement authority with regard to Federal occupational safety and health standards in all issues covered by the Virginia plan.

On August 15, 1984, in accordance with procedures at 29 CFR 1902.34 and 1902.35, the Assistant Secretary certified that Virginia had satisfactorily completed all developmental steps (49 FR 33123, August 21, 1984). In certifying the plan, the Assistant Secretary found the structural features of the program—the statute, standards, regulations, and written procedures for administering the Virginia plan—to be at least as effective as corresponding Federal provisions. Certification does not, however, entail findings or conclusions by OSHA concerning adequacy of actual plan performance. As has already been noted, OSHA regulations provide that certification initiates a period of evaluation and monitoring of State activity to determine in accordance with section 18(e) of the Act whether the statutory or regulatory criteria for State plans are being applied in actual operations under the plan and whether final approval should be granted.

On June 13, 1978, OSHA published a notice in the **Federal Register** (43 FR 25491) requesting public comment on a petition received by the Agency requesting withdrawal of OSHA approval of the Virginia State plan. The petition was submitted by the Oil, Chemical, and Atomic Workers (OCAW) International Union. Three additional petitions requesting plan withdrawal were subsequently filed by the Fairfax County, Virginia, Board of Supervisors, the Virginia State AFL–CIO, and the Building and Construction Trades Department of the AFL–CIO. On October 3, 1980, a **Federal Register** notice was published (45 FR 65625) requesting public comments on the three petitions as well as providing an additional time period for public comments on the OCAW petition.

The OCAW petition alleged that Virginia's enforcement of safety and health standards was not as effective as that of Federal OSHA. The Virginia State AFL–CIO criticized Virginia's judicial review system and alleged that Virginia had failed to enforce safety and health standards as effectively as Federal OSHA. The Fairfax County Board of Supervisors and the Building and Construction Trades Department of the AFL–CIO alleged that Virginia's enforcement in the construction industry was ineffective and insufficient.

Of the 101 written comments received in response to the two notices requesting public comment, 97 expressed support for the Virginia plan while four letters supported the petitions for withdrawal, two of those letters having been submitted by petitioners themselves. In a **Federal Register** notice dated July 14, 1981 (46 FR 36141) the Assistant Secretary announced that in light of recent Federal monitoring data, comparison with Federal performance, information provided in the public comments, and other relevant factors, a withdrawal proceeding against the Virginia State plan was not warranted and the petitions were therefore denied.

On December 12, 1986, OSHA published a **Federal Register** notice (51 FR 44784) that effective October 1, 1986, concurrent Federal authority would be exercised in Virginia with respect to general schedule inspections resulting in denials of entry under the Virginia State plan. The resumption of concurrent enforcement authority was undertaken as a temporary measure to allow Virginia to complete its efforts to legislatively address difficulties it had encountered in the area of right of entry. The specific difficulty resulted from a 1985 Virginia Supreme Court decision that suggested, but did not expressly hold, that Virginia employers challenging general schedule inspection warrants would be entitled to discovery, including the release of confidential inspection scheduling information and "establishment lists" of workplaces likely to be inspected in the future. In a subsequent case involving a challenge to a State inspection warrant, the Circuit Court for the City of Roanoke, relying on the 1985 Virginia Supreme Court decision, ordered State officials responsible for enforcing the plan to submit to discovery requested by the employer, including the submission of data underlying the Virginia inspection plan, deposition of officials responsible for developing and implementing the inspection scheduling plan, and the release to the employer of various confidential scheduling material, including establishment lists. In cases involving similar challenges to Federal OSHA inspection warrants, the Federal courts have held such discovery improper. It was the Assistant Secretary's determination that these State court decisions rendered Virginia's right of entry authority less effective than the Federal and necessitated the reinstitution of limited concurrent Federal enforcement authority to ensure worker protection.

The 1987 session of the Virginia General Assembly enacted legislative amendments to remedy the Virginia plan's right of entry difficulties. OSHA's review of those amendments determined that the amendments provided the Virginia plan with a basis to obtain search warrants on terms and conditions equivalent to those which are available Federally. Accordingly, the Assistant Secretary approved the legislative amendments in the September 17, 1987 **Federal Register** (52 FR 35069) and announced that the limited exercise of concurrent Federal jurisdiction in Virginia had been terminated when the amendments became effective on July 1, 1987. A recent court decision has upheld the State's revised warrant authority.

Virginia Benchmarks

Under the terms of a 1978 Court Order in *AFL–CIO* v. *Marshall*, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In 1980, in response to the Court Order, OSHA established benchmarks for all approved State plans, including benchmarks of 51 safety and 74 health compliance officers for Virginia. The 1978 Court Order noted that new information might warrant an adjustment by OSHA of the fully effective benchmarks. In September 1984 Virginia in conjunction with OSHA, completed a reassessment of the levels staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986 (51 FR 2481).

Determination of Eligibility

This **Federal Register** notice announces the eligibility of the Virginia plan for an section 18(e) determination. (29 CFR 1902.39(c) requires that this preliminary determination of eligibility be made before section 18(e) procedures begin.) The determination of eligibility is based upon OSHA's findings that:

(1) The Virginia plan has been monitored in actual operation for at least one year following certification. The results of OSHA monitoring of the plan since the commencement of plan operations are contained in written evaluation reports which are prepared annually and made available to the State and to the public. The results of OSHA's most recent post-certification

monitoring during the period from January 1, 1987 through March 31, 1988 are set forth in an section 18(e) *Evaluation Report of the Virginia Plan*, which has been made part of the record of the present proceedings.

(2) The plan meets the State's revised benchmarks for enforcement staffing. In January 1986, pursuant to the terms of the Court Order and the *1980 Report to the Court* in *AFL–CIO* v. *Marshall*, OSHA approved revised fully effective benchmarks of 38 safety and 21 health compliance officers for Virginia based on an assessment of State-specific characteristics and historical experiences. Virginia has allocated these positions, as evidenced by the FY 1988 *Application for Federal Assistance* in which the State has committed itself to funding the State share of salaries for 38 safety and 21 health compliance officers. The FY 1988 application has been made part of the record in the present proceeding.

(3) Virginia participates and has assured its continued participation in the Integrated Management Information System (IMIS) developed by OSHA.

Issues for Determination in the 18(e) Proceedings

The Virginia plan is now at issue before the Assistant Secretary for determination as to whether the criteria of section 18(c) of the Act are being applied in actual operation. 29 CFR 1902.37(a) requires the Assistant Secretary, as part of the final approval process, to determine if the State has applied and implemented all the specific criteria and indices of effectiveness of §§ 1902.3 and 1902.4. The Assistant Secretary must make this determination by considering the factors set forth in § 1902.37(b). OSHA believes that the results of its evaluation of the Virginia plan, contained in the section 18(e) Evaluation Report, considered in light of these regulatory criteria and the criteria in section 18(c) of the Act, indicate that the regulatory indices and criteria are being met, and the Assistant Secretary accordingly has made an initial determination that the Virginia plan is eligible for an affirmative section 18(e) determination. This notice initiates proceedings by which OSHA expects to elicit public comment on the issue of granting an affirmative section 18(e) determination to Virginia. In order to encourage the submission of informed and specific public comment, a summary of current evaluation findings with respect to these criteria is set forth below.

(a) Standards and Variances

Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. A State is required to adopt, in a timely manner, all Federal standards and amendments or to develop and promulgate standards and amendments at least as effective as the Federal standards. See §§ 1902.37(b)(3), 1902.3(c), 1902.4 (a) and (b). The Virginia plan provides for adoption of standards which are in most cases identical to Federal standards. For OSHA standards requiring State action during the section 18(e) evaluation period, Virginia's adoption process met the six-month time frame for 12 of 13 standards. (One standard took 7 months to adopt.) [Evaluation Report, p. 6.]

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. Where a State develops and promulgates its own standards, interpretation and application must ensure coverage at least as effective as comparable Federal standards. While acknowledging prior approval of individual standards by the Assistant Secretary, this requirement stresses that State standards, in actual operation, must be at least as effective as the Federal standards. See §§ 1902.37(b)(4), 1902.3(c)(1), 1902.3(d)(1), 1903.4(a), and 1902.4(b)(2). As already noted, the Virginia plan provides for adoption of standards identical to Federal standards. Virginia also adopted standards interpretations which are identical to the Federal.

The State is required to take the necessary administrative judicial or legislative action to correct any deficiency in its program caused by an administrative or judicial challenge to any State standard, whether the standard is adopted from the Federal standards or developed by the State. See § 1902.37(b)(5). No such challenge to State standards has ever occurred in Virginia.

When granting permanent variances from standards, the State is required to ensure that the employer provides as safe and healthful working conditions as would have been provided if the standard were in effect. See §§ 1902.37(b)(6) and 1902.4(b)(2)(iv). Virginia had four requests for a permanent variance during the 18(e) evaluation period. Two were closed owing to lack of response from the applicants, one application was withdrawn, and one was pending. [Evaluation Report, p. 7.]

Where a temporary variance is granted, the State must ensure, among other things, that the employer complies with the standard as soon as possible and provides appropriate interim employee protection. See §§ 1902.37(b)(7) and 1902.4(b)(2)(iv). The Virginia temporary variance procedures require that any employer granted a temporary variance must have an effective program for coming into compliance with the standard as soon as possible. During the section 18(e) evaluation period, no temporary variance requests were received. [Evaluation Report, p. 7.]

(b) Enforcement

Section 18(c)(2) of the Act requires State plans to maintain an enforcement program which is at least as effective as that conducted by Federal OSHA; section 18(c)(3) requires the State plan to provide for right of entry and inspection of all work places at least as effective as that in section 8 of the Act.

The State inspection program must provide that sufficient resources be directed to designated target industries while providing adequate protection to all other workplaces covered under the plan. See §§ 1902.37(b)(8), 1902.3(d)(1), and 1902.4(c). Data contained in the section 18(e) Evaluation Report indicates that 96.2% of State programmed safety inspections and 100% of programmed health inspections were conducted in high hazard industries. [Evaluation Report, p. 12.]

In cases of refusal of entry, the State must exercise its authority, through appropriate means, to enforce the right of entry and inspection. See §§ 1902.37(b)(9), 1902.3 (e) and (f), and 1902.4(c)(2) (i) and (ix). Title 40.1 of the Code of Virginia allows the Commissioner to seek a warrant to permit entry into such establishment that has refused entry for the purpose of inspection or investigation. Virginia had 18 denials of entry during this evaluation period, was successful in obtaining entry in 14 instances. Once case was referred to Federal OSHA during the 9-month period of concurrent Federal jurisdiction, and in 3 instances the short-term construction jobs were completed before entry could be obtained. [Evaluation Report, pp. 15–16.]

Inspections must be conducted in a competent manner following approved enforcement procedures which include the requirement that inspectors acquire information adequate to support any citation issued. See § 1902.37(b)(10), 1902.3(d)(1), and 1902.4(c)(2). Procedures for the Virginia Occupational safety and health compliance program are set out

in the Virginia Field Operations Manual, which is patterned after the Federal manual, and thus follows inspection procedures, including documentation procedures, which are similar to Federal. The Evaluation Report notes overall adherence by Virginia to these procedures.

Virginia cited an average of 3.6 violations per programmed safety inspection with citations and 4.5 violations per programmed health inspection with citations, and 17.8% of safety violations and 8.6% of health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal statistics and were attributed to instances of incorrect hazard classification and identification by compliance officers. The State provided compliance officers with supplemental training to ensure the proper classification of violations of certain specific standards. [Evaluation Report, p. 17.]

State plans must include a prohibition on advance notice, and exceptions must be no broader than those allowed by Federal OSHA procedure. See § 1902.3(f). Virginia adopted approved procedures for advance notice similar to the Federal procedures. There were 13 instances of advance notice. In all 13 instances, advance notice was properly given in accord with procedures as required for the effective conduct of inspections. [Evaluation Report, p. 16.]

State plans must provide for inspections in response to employee complaints, and must provide an opportunity for employee participation in State inspections. See § 1902.4(c)(i) through (iii). Virginia has procedures similar to Federal OSHA for processing and responding to compliants. The data indicates that during the evaluation period the State responded to 56.6% of safety complaints and 56.4% of health complaints with an inspection. The State's relatively high percentage of health complaints responded to with inspections as compared to the Federal experience is attributed to the State's policy of investigating all complaints (both formal and non-formal) alleging potential asbestos exposure. [Evaluation Report, pp. 13–14.] During the current evaluation period, 97.6% of all State inspections included either an employee representative on the walkaround or interviews with employees.

State plans must also provide protection for employees against discrimination similar to that found in section 11(c) of the Federal Act. See § 1902.4(c)(2)(v). Title 40.1 of the Code of Virginia and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. A total of 25 complaints alleging discrimination were investigated during the evaluation period, 4 of which were determined to be meritorious. All 4 had been settled or litigated by the end of the period. [Evaluation Report, pp. 19–20.]

The State is required to issue, in a timely manner, citations, proposed penalties, and notices of failure to abate. See §§ 1902.37(b)(11), 1902.3(d), and 1902.4(c)(2) (x) and (xi). The State's lapse time from last day of inspection to issuance of citation averaged 28.8 days for safety and 48.3 days for health.

The State must propose penalties in manner that is at least as effective as the penalties under the Federal program, which includes first instance violation penalties and consideration of comparable factors required in the Federal program. See §§ 1902.37(b)(12), 1902.3(d), and 1902.4(c) (x) and (xi). Virginia's procedures for penalty calculation are the same as the Federal procedures with the exception that the State has not adopted the Federal procedure of citing willful violations with instance-by-instance penalties. The section 18(e) Evaluation Report noted that Virginia proposes appropriate penalties. The average penalty for serious safety violations was $325.50 and the average serious health penalty was $447. [Evaluation Report, pp. 18–19.]

The State must ensure abatement of hazards cited including issuance of notices of failure to abate and appropriate penalties. See §§ 1902.37(b)(13), 1902.3(d), and 1902.4(c) (vii) and (xi). Follow-up inspections accounted for .9% of Virginia's total safety inspections and 3.7% of its health inspections, with 17.2% of the safety follow-up inspections and 28.6% of the health follow-ups resulting in failure-to-abate notifications. Virginia's abatement periods for serious violations averaged 7.9 days for safety and 28.3 days for health. [Evaluation Report, p. 18.]

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). As noted above, a 1985 decision by the Virginia Supreme Court had created a situation whereby the State's ability to obtain search warrants when denied entry on general schedule inspections was severely compromised. The State plan officials recognized the difficulty and successfully sought corrective legislative amendments from the 1987 session of the Virginia General Assembly. Those amendments became effective on July 1, 1987. The Virginia section 18(e) Evaluation Report noted no other instances of adverse adjudications. [Evaluation Report, pp. 4 and 19–20.]

(c) Staffing and Resources

The State is required to have a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan. See section 18(c)(4) of the Act; 29 CFR 1902.37(b)(1), 1902.3(d) and 1902.3(h). A State must also direct adequate resources to administration and enforcement of the plan. See section 18(c)(5) of the Act and § 1902.3(i). As discussed above, the Virginia plan provides for 38 safety compliance officers and 21 industrial hygienists as set forth in the Virginia FY 1988 grant. This staffing level meets the approved, revised "fully effective" benchmarks for Virginia for health and safety staffing, as discussed elsewhere in this notice.

Virginia provides its safety and health personnel with formal training based on the needs of the staff and availability of funds. The OSHA Training Institute is utilized for staff training, and the State conducts semi-annual conferences to train personnel in new and updated policy and technical changes. In 1987, safety compliance officers received 6,278 hours and industrial hygienists received 6,431 hours of formal training. [Evaluation Report, pp. 9–10.]

(d) Other Requirements

States which have approved plans must maintain a safety and health program for State and local employees which must be as effective as the State's plan for the private sector. See § 1902.3(j). The Virginia plan provides a program in the public sector which is comparable to that in the private sector, except that no penalties are proposed. Injury and illness rates are higher in the public sector than in the private (all case rate—9.4; lost workday case rate—4.5). The State and local government lost workday case rate decreased slightly from 1985 to 1986 (4.6 to 4.5) while the private sector rate showed a slight increase (from 3.4 to 3.5).

As a factor of its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those

under the Federal program. See § 1902.37(b)(15). The 1985 and 1986 Bureau of Labor Statistics injury and illness rates for Virginia (private sector all case rate for 1985 was 7.3 and for 1986 was 7.6; lost workday case rate for 1985 was 3.4 and for 1986 was 3.5) were comparable to rates in States where Federal OSHA provides enforcement coverage. In 1986, the all case incidence rates and the lost workday case rates for private sector, manufacturing and construction experienced a mix of increases and decreases in Virginia, the rates of increase were within the acceptable range established under OSHA's State Plan Activities Measures. In addition, only one of the five most hazardous industries in Virginia showed an increase from 1985 to 1986 in its lost workday case rate (SIC 42, Lumber and Wood Products, except Furniture), and that rate (8.9) was the same as the 1986 Federal rate for that particular industry.

State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect. See section 18(c)(7) of the Act; 29 CFR 1902.3(k). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require. Section 18(c)(8) of the Act; 29 CFR 1902.4(1). Virginia employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Illness and Injuries. As noted above, the State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

Section 1092.4(c)(2)(xiii) requires States to undertake programs to encourage voluntary compliance by employers by such means as conducting training and consultation with employers and employees. Training programs for both the State's staff and the public sector have been established and are ongoing. In the public sector, 199 employers and supervisors and 5,789 employees participated in 149 training sessions in 1987. In the private sector, 192 employers and supervisors and 3,864 employees participated in 280 training sessions. [Evaluation Report, p. 10.] In addition, on-site consultation services are provided in the public sector. (The State's on-site consultation program for the private sector is conducted apart from the State plan under an agreement with OSHA under section 7(c)(1) of the OSH Act.)

Effect of § 18(e) Determination

If the Assistant Secretary, after completion of the proceedings described in this notice, determines that the statutory and regulatory criteria for State plans are being applied in actual operations, final approval will be granted and Federal standards and enforcement authority will cease to be in effect with respect to issues covered by the Virginia plan, as provided by Section 18(e) of the Act and 29 CFR 1902.42(c). Virginia has excluded from its plan: Safety and health coverage in private sector maritime activities (enforcement of occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry standards (29 CFR Part 1910) appropriate to hazards found in these employments). In addition, Virginia does not cover employment on military facilities. Thus, Federal coverage of private sector maritime employment and military facilities would be unaffected by an affirmative section 18(e) determination.

In the event an affirmative section 18(e) determination is made by the Assistant Secretary following the proceedings described in the present notice, a notice will be published in the **Federal Register** in accordance with 29 CFR 1902.43; the notice will specify the issues as to which Federal authority is withdrawn, will state that Federal authority with respect to enforcement under section 5(a)(1) of the Act and discrimination complaints under section 11(c) of the Act remains in effect, and will state that if continuing evaluations show that the State has failed to maintain a compliance staff which meets the revised fully effective benchmarks, or has failed to maintain a program which is at least as effective as the Federal, or that the State has failed to submit program change supplements as required by 29 CFR Part 1953, the Assistant Secretary may revoke final approval and reinstate Federal enforcement authority or, if the circumstances warrant, initiate action to withdraw approval of the State plan. At the same time, Subpart C of 29 CFR Part 1952, which codifies OSHA decisions regarding approval of the Virginia plan, would be amended to reflect the section 18(e) determination if an affirmative determination is made.

Documents of Record

All information and data presently available to OSHA relating to the Virginia section 18(e) proceeding have been made a part of the record in this proceeding and placed in the OSHA Docket Office. The contents of the record are available for inspection and copying at the following locations:

Docket Office, Room N-2439 Rear, Docket No. T-023
Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.
Regional Administrator—Region III, U.S. Department of Labor-OSHA, Gateway Building, Suite 21000, 3535 Market Street, Philadelphia, Pennsylvania 19104.
Virginia Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241-0064.

To date, the record on final approval determination includes copies of all **Federal Register** documents regarding the plan, including notices of plan submission, initial Federal approval, certification of completion of developmental steps, codification of the State's operational status agreement, and other plan supplements. The record also includes the State plan document, which includes a plan narrative, the State legislation, regulations and procedures, an organizational chart for State staffing; the State's FY 1988 Federal grant; and the January 1, 1987 through March 31, 1988 18(e) Evaluation Report and all previous, post-certification reports.

Public Participation

Request for Public Comment and Opportunity to Request Hearing

The Assistant Secretary is directed under § 1902.41 to make a decision whether an affirmative section 18(e) determination is warranted or not. As part of the Assistant Secretary's decision-making process, consideration must be given to the application and implementation by Virginia of the requirements of section 18(c) of the Act and all specified criteria and indices of effectiveness as presented in 29 CFR 1902.3 and 1902.4. These criteria and indices must be considered in light of the 15 factors in 29 CFR 1902.37(b) (1) through (15). However, this action will be taken only after all the information contained in the record, including OSHA's evaluation of the actual operations of the State plan, and information presented in written submissions and during an informal public hearing, if held, is reviewed and analyzed. OSHA is soliciting public participation in this process so as to assure that all relevant information, views, data and arguments related to the indices, criteria and factors presented in 29 CFR Part 1902, as they

apply to Virginia State plan, are available to the Assistant Secretary during this administrative proceeding.

Interested persons are invited to submit written data, views, and arguments with respect to this proposed section 18(e) determination. These comments must be received on or before (35 days) and submitted in quadruplicate to the Docket Officer, Docket No. T–023, Room N–2439 Rear, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Written submissions must clearly identify the issues which are addressed and the positions taken with respect to each issue. The State of Virginia will be afforded the opportunity to respond to each submission.

Pursuant to 29 CFR 1902.39(f), interested persons may request an informal hearing concerning the proposed section 18(e) determination. Such requests also must be received on or before (35 days) and should be submitted in quadruplicate to the Docket Officer, Docket T–023, at the address noted above. Such requests must present particularized written objections to the proposed section 18(e) determination. The Assistant Secretary will decide within 30 days of the last day for filing written views or comments and requests for a hearing whether the objections raised are substantial and, if so, will publish notice of the time and place of the scheduled hearing.

The Assistant Secretary will, within a reasonable time after the close of the comment period or after the certification of the record if a hearing is held, publish his decisions in the **Federal Register**. All written and oral submissions, as well as other information gathered by OSHA, will be considered in any action taken. The record of this proceeding, including written comments and requests for hearing and all materials submitted in response to this notice and at any subsequent hearing, will be available for inspection and copying in the Docket Office, Room N–2439 Rear, at the previously mentioned address, between the hours of 8:15 a.m. and 4:45 p.m.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a significant economic impact on a substantial number of small entities. Final approval would not place small employers in Virginia under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (43 FR 35736)).

Signed at Washington, DC, this 30th day of August, 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 88–19972 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendments

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Missouri permanent regulatory program (hereinafter referred to as the Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Regulation changes in the area of blaster certification are in response to a required program amendment placed on the Missouri program at 30 CFR 925.16(i). Regulation changes related to prime farmland and definitions are in response to a December 4, 1987, issue letter from OSMRE to the Missouri program concerning inadequacies of an amendment submitted to OSMRE for approval on June 22, 1987. These changes are being made so that the State's laws and regulations will be consistent with SMCRA and the Federal regulations.

Regulations changes related to use of explosives, surface mining permit applications, and review, public participation, and approval of permit applications are being proposed at the State's own initiative to improve its program.

This notice sets forth the times and locations that the Missouri program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. October 3, 1988. If requested, a public hearing on the proposed amendments will be held on September 27, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m., on September 19, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below. Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contracting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106, Telephone: (816) 374–6405

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5215, 1100 L Street, NW, Washington, DC 20240, Telephone: (202) 343–5492

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (314) 751–4041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office at the address listed in "**ADDRESSES**." Telepone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Missouri program on November 21, 1980. Information regarding the general background of the Missouri program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions taken with regard to the program and amendments can be found at 30 CFR 925.15 and 925.16.

II. Proposed Amendments

On August 3, 1988, (Administrative Record No. MO–392) Missouri submitted proposed amendments to its permanent regulatory program under SMCRA.

Missouri submitted proposed regulations in response to a required program amendment placed on the Missouri program at 30 CFR 925.16(i) concerning the State's program for training, examination, and certification of blasters. The amendment contains revisions that rescind and replace those regulations within the Missouri Code of State Regulations (CSR) at 10 CSR 40–3.160 Training, Examination, and Certification of Blasters.

Missouri submitted proposed regulations regarding prime farmland and definitions in response to a December 4, 1987 issue letter from OSMRE to the Missouri program concerning the adequacies of an amendment submitted to OSMRE for approval on June 22, 1987. The amendment contains revisions that modify Missouri's regulations at 10 CSR 40–4.030 (4) and (7) Operations on Prime Farmland and 10 CSR 40–8.010(1) Definitions.

At Missouri's own initiative, the State revises its regulations at 10 CSR 40–3.050 (1), (2), (3), and (5) Requirements for the Use of Explosives Underground Operations; 10 CSR 40–3.210 (1), (2), (3), and (5) Requirements for the Use of Explosives; 10 CSR 40–6.040(12) Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources; and 10 CSR 40–6.070(8) Review, Public Participation, and Approval of Permit Applications and Permit Terms and Conditions.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h)(10), OSMRE is now seeking comment on whether the amendments proposed by Missouri satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. September 19, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 925

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

Date: August 19, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 88–20076 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–88–10]

Proposed Drawbridge Operation Regulations; Petaluma River, Petaluma, CA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of City of Petaluma, the Coast Guard is considering a change to regulations for the "D" Street Bridge, across the Petaluma River, mile 13.7, at Petaluma, California, by requiring that four hours advance notice of opening be given from 6 a.m. to 6 p.m. and 24 hours advance notice be given from 6 p.m. to 6 a.m. The bridge currently opens upon four hour advance notice at all times. This proposal is being made because the percentage of nighttime opening is decreasing and the City is seeking to reduce operating costs. This action should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should be mailed to Commander (oan-br), Eleventh Coast Guard District, Bldg 10 Room 214, Coast Guard Island, Alameda, CA 94501–5100. The comments and other materials referenced in this notice will be available for inspection and copying at the same address. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Sharol Taylor, Bridge Administrator, Eleventh Coast Guard District at (415) 437–3514.

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

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

Drafting Information

The drafters of this notice are Sharol E. Taylor, project officer, and Lieutenant Commander J. J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The "D" Street Bridge is a single-leaf bascule, two lane, highway bridge constructed in 1933. It provides vertical clearance of 13 feet above Mean Lower Low Water (MLLW) (5 feet above Mean High Water (MHW)) and horizontal clearance of 65 feet between fenders. The waterway upsteam of the bridge is a turning basin used for mooring commercial fishing vessels and recreational boats. The City of Petaluma has requested a change to the existing regulation for the bridge to require

greater advance notice for nighttime openings, so that they will not have to pay operators to remain on call except when openings are needed. The current nighttime openings account for 8% of all bridge openings. The percentage of openings is decreasing. In 1986, 14% of openings were at night. The Coast Guard believes that this regulation may provide for the reasonable needs of navigation.

Economic Assessment and Certification

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

While the proposal may have some economic impact on commercial waterway users, the impact is expected to be minimal. Therefore, a full regulatory evaluation is considered unnecessary at this time. However, before any final regulations are issued, the economic impact will be re-evaluated based upon comments received. Anyone who believes their business will suffer as a result of this proposal is requested to document the problem in their comments.

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

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.187 (b) is revised to read as follows:

§ 117.187 Petaluma River.

* * * * *

(b) The draw of the Petaluma highway bridge at "D" Street, mile 13.7 at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. and 6 a.m. The draw shall open as soon as possible for vessels, including commercial vessels, engaged in rescue or emergency salvage operations.

Dated: August 25, 1988.

J. W. Kime,

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

[FR Doc. 88–19962 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD7–88–27]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Florida Department of Transportation, Sarasota County, and the Venice Area Chamber of Commerce have requested the Coast Guard to consider adding regulations governing the Hatchett Creek (SR 45/US–41), Venice Avenue, and South Venice (SR 45/US–41) drawbridges, mile 56.9, 56.6, and 54.9 respectively, at Venice, Florida by permitting the number of openings to be limited during certain periods. This proposal is being made because an increase in highway traffic has occurred on weekdays and bridge openings intensify traffic congestion. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 17, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor, Brickell Plaza Federal Building, 909 SE 1st Ave, Miami, Florida. Office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerald Fleming at (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses identify the bridge(s), and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information

The drafters of this notice are Lieutenant Commander Gerald Fleming, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Hatchett Creek, Venice Avenue, and South Venice (SR 45/US–41) drawbridges cross the Gulf Intracoastal Waterway at Venice, Florida. Existing regulation of the Hatchett Creek drawbridge requires that the draw open on signal, except that, from 7 a.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On Saturdays, Sundays, and Federal holidays from 7:30 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half hour, and three-quarter hour. The Venice Avenue drawbridge regulations require that the draw open on signal, except that, from 7 a.m. to 6 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour, and 50 minutes after the hour. The South Venice drawbridge opens on signal. The Florida Department of Transportation, Sarasota County, and the Venice Area Chamber of Commerce have proposed that the Hatchett Creek, Venice Avenue, and South Venice drawbridges need not open on weekdays between the hour of 4:30 p.m. and 5:30 p.m. It is also proposed to open the South Venice drawbridge on the hour and half hour between 7:00 a.m. and 7:00 p.m., on weekdays, January through December. The proposed rule would not substantially change the existing timed regulations in effect on the Hatchett Creek and Venice Avenue drawbridges but would merely establish a closed period of one hour between 4:30 p.m. and 5:30 p.m. on weekdays. The Coast Guard feels this change would reduce the number of bridge openings thereby reducing the incidence of vehicular traffic jams, and would still provide for the reasonable needs of navigation. However, after careful review of the number of bridge openings, highway traffic data, and waterway traffic conditions, the Coast Guard does not feel that the timed openings and the one hour closed period proposed for the

South Venice (SR 45/US–41) drawbridge are justified. The Coast Guard will seek comments on this proposal from the public. The regulations, if approved, would exempt public vessels of the United States, tugs with tows, and vessels in distress, which would be passed through the draw at anytime.

Economic Assessment and Certification

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

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

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

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

PART 117—[AMENDED]

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

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

2. Section 117.287 (a–1) and (b) are revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River To Perdido River.

* * * * *

(a–1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(b) The draw of the Hatchett Creek (US–41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:20 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open.

* * * * *

Dated: August 19, 1988.

Martin H. Daniell,

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

[FR Doc. 88–19963 Filed 9–1–88; 8:45 am]

BILLING CODE 49–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Transfer of Records to the National Archives

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule prescribes how agency heads certify that permanently valuable records more than 30 years old are needed for current agency business and to clarify the procedures for removing statutory and other restrictions imposed on records transferred to the National Archives of the United States. The proposed rule affects only Federal agencies.

DATES: Comments must be received by October 3, 1988.

ADDRESSES: Comments should be sent to Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION:

Under 44 U.S.C. 2107, the Archivist of the United States may "direct and effect the transfer to the National Archives of the United States of records of a Federal agency that have been in existence for more than 30 years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Archivist that they must be retained in his custody for use in the conduct of the regular current business of the agency." The current 36 CFR 1228.180(a)(2) merely restates this provision of the law.

The proposed rule establishes criteria for the agency head to consider in determining whether the records should be retained by the agency for the conduct of its regular current business or whether the agency's needs can be met by NARA reference services on the records after transfer. The proposed rule also specifies what information must be contained in the written certification, including a comprehensive description and location of the records to be retained. NARA will not accept an agency certification that the records are being used for the conduct of regular current business if the agency is retaining the records only to provide access to persons outside the agency or to function as an unauthorized agency archives.

The National Archives was established to provide a central repository for Federal records of continuing value, to preserve the records and make them available for research use in a centralized cost-efficient manner by agency managers, historians, genealogists, lawyers, other specialized researchers and the general public. Agencies should not maintain their older records in order to make them accessible for general reference and research. This proposed rule should assist agencies in making an informed determination whether their permanently valuable records over 30 years old are needed for current business in agency space.

The certification procedures are followed only when NARA directs the transfer of records. Where a NARA-approved records schedule specifies that the records are to be transferred to the National Archives at a date later than 30 years after creation or where NARA recognizes legitimate agency needs for the records, NARA will not direct the transfer of records from the agency.

Procedures for removing statutory and other restrictions in § 1228.180 are moved from the current paragraph (b) into a new paragraph (c) and rewritten to improve their clarity. No substantive changes are made to these procedures, which reflect the statutory requirements of 44 U.S.C. 2108. Agencies should note that 36 CFR Part 1256 sets forth the general and specific restrictions which may apply to transferred records beyond the initial 30 year period provided in 44 U.S.C. 2108. For example, transferred records which are security classified will remain restricted until properly declassified pursuant to Executive Order 12356 and its implementing directive (36 CFR 1256.10).

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1228

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Chapter XIII of Title 36 of the Code of Federal Regulations as follows:

PART 1228—DISPOSITION OF FEDERAL RECORDS

1. The authority citation for Part 1228 is revised to read as follows:

Authority: 44 U.S.C. chapters 21, 29, and 31.

2. Section 1228.180 is revised to read as follows:

§ 1228.180 Authority.

(a) *Transfer of records.* The Archivist of the United States is authorized by 44 U.S.C. 2107 to:

(1) Accept for deposit with the National Archives of the United States the records of a Federal agency or of the Congress determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government; and

(2) Direct and effect the transfer to the National Archives of the United States of Federal agency records that have been in existence for more than 30 years and that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, unless the head of the agency which has custody of the records certifies in writing to the Archivist that the records must be retained in agency custody for use in the conduct of the regular current business of the agency. Records that are scheduled in a NARA-approved records schedule to be transferred to the National Archives of the United States after a specified period of time are subject to the certification requirement only if the records are not transferred as scheduled.

(i) In order to certify that records must be retained for the conduct of regular current business, an agency should consider the following factors:

(A) Character of use (to be retained by an agency, records should be used for the normal routine business of the agency at the time of certification);

(B) Frequency of use (to be retained by an agency, records should be used more than one time per month per file unit); and,

(C) Preservation of the records (to be retained by an agency, permanently valuable records should be preserved in accordance with NARA guidelines).

(ii) The written certification of need of a series of 30 year-old records for current agency business must:

(A) Include a comprehensive description and location of records to be retained;

(B) Cite the NARA approved authority for the disposition of the records if scheduled (GRS or SF 115 item number);

(C) Describe the current business for which the records are required;

(D) Estimate the length of time the records will be needed by the agency for current business (if no date is provided by the agency, approved certification requests will be effective for a maximum of five years);

(E) Explain why the current needs of the agency cannot be met by the services NARA provides for records deposited with the National Archives of the United States; and,

(F) If the records are being retained to enable the agency to provide routine public reference, cite the statute authorizing this agency activity.

(iii) NARA will not accept an agency certification that a specific body of records over 30 years old, regardless of physical form or characteristics, is being used for the "conduct of the regular current business," if that agency is retaining such records primarily to:

(A) Provide to persons outside the agency access which can be provided by NARA; or

(B) Function as an agency archives, unless specifically authorized by statute or NARA.

(b) *Custody of records transferred.* Under 44 U.S.C. 2108, the Archivist of the United States is responsible for the custody, use, and withdrawal of records transferred to him.

(c) *Transferred records subject to statutory or other restrictions.*

(1) When records, the use of which is subject to statutory limitations and restrictions, are so transferred, permissive and restrictive statutory provisions concerning the examination and use of records applicable to the head of the transferring agency are applicable to the Archivist of the United States and the employees of the National Archives.

(2) Before records are transferred to the National Archives, the head of the agency may state in writing restrictions that appear to him or her to be necessary or desirable in the public interest on the use or examination of records. The head of the agency must, however, justify and cite the statute or Freedom of Information Act exemption (5 U.S.C. 552(b)) that authorizes placing restrictions on the use or examination of records being considered for transfer. If the Archivist agrees, restrictions will be placed on the records.

(i) *For records less than 30 years old.* Unless required by law, the Archivist will not remove or relax restrictions placed upon records less than 30 years old without the concurrence in writing of the head of the agency from which the material was transferred or of his or her successor, if any. If the transferring agency has been terminated and there is no successor in function, the Archivist is authorized to relax, remove or impose restrictions in the public interest.

(ii) *For records 30 or more years old.* After the records have been in existence for 30 years or more, statutory or other restrictions referred to in this section shall expire unless the Archivist determines, after consulting with the head of the transferring agency, that the restrictions shall remain in force for a longer period. Such restrictions may be extended by the Archivist beyond 30 years only for reasons consistent with standards established in relevant statutory law, including the Freedom of Information Act (5 U.S.C. 552).

Dated: August 5, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–20004 Filed 9–1–88; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3440–2]

Approval and Promulgation of Implementation Plans; California; San Diego Volatile Organic Compound (VOC) Rules for Graphic Arts Printing and Coating, and Pharmaceutical and Cosmetic Manufacturing Source Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this notice EPA solicits public comments on two draft rules for the control of VOC from certain operations of graphic arts printing and coating, and pharmaceutical and cosmetic manufacturing sources in San Diego County, California. When adopted, Rules 67.15 and 67.16 will formalize, for the most part, the emission reductions previously obtained by the County through conditions on its stationary sources operating permits Only through the formal rulemaking process (going on concurrently at the

County and Federal levels) can EPA ensure the continuation of the full emission reduction potential envisioned by the County. Most of the emission reduction is already reflected in improved ozone air quality data. The County estimates additional emission reductions will amount to about 0.25 tons VOC/day (from graphic arts sources). No further air quality improvement is anticipated as a result of the adoption of the subject rules. The EPA approval, however, will provide federally enforceable limits and creditable air quality improvements. EPA's proposed approval is contingent upon County adoption and official State submittal of regulations at least as stringent and enforceable as those available for review through this notice. Such approval authorized under Sections 110 and 172 of the Clean Air Act (CAA), undertaken through "parallel processing", expedites the approval process. When completed, the process provides states with expedited federal enforceability of its local air pollution control regulations.

DATES: Written comments may be submitted on or before October 3, 1988.

ADDRESSES: Comments may be sent to Morris I. Goldberg, States Implementation Plan Section, at the EPA Regional Office address listed below. Copies of the EPA Rule Evaluations and the draft rules are available for public inspection at the EPA Region 9 Office and at the following locations during normal business hours.

California Air Resources Board (ARB), 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

San Diego County Air Pollution Control District (APCD), 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg, State Implementation Plan Section (A–2–3), Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: FTS 454–8213, Commercial (415) 974–8213.

SUPPLEMENTARY INFORMATION: .

Background

San Diego County was identified as a nonattainment area for ozone on March 3, 1978 (43 FR 8970). State Implementation Plan (SIP) revisions satisfying the requirements of CAA Part D were required to be submitted by the state for each such nonattainment area. SIP revisions submitted by California for San Diego County were approved as completely satisfying the federal requirements specific to attainment of the ozone NAAQS. One such requirement, imposed on areas demonstrating the need for an extension of the ozone attainment deadline from 1982 to 1987, was for the adoption of control measures comparable to those specified by EPA in its "Control Techniques Guidelines" (CTG) as "Reasonably Available Control Technology" (RACT). RACT was defined as the minimum level of control which EPA would approve in SIP revisions for extension areas. EPA published its CTGs for control of VOC emissions from pharmaceutical manufacturing and graphic arts industry operations in December 1978 as report numbers EPA–450/2–78–029 and EPA–450/2–78–033, respectively.

Evaluation

Although the APCD did not adopt regulations for the control of emissions from sources in the subject CTG categories prior to EPA approval, the ozone SIP control strategy approval was given because the County had already achieved most of the emission control through permit conditions. The County concentrated its efforts on permit conditioning where possible and regulatory development, a more time consuming process, where necessary. EPA prefers to obtain enforceable rules, directly and selectively, through formal rule development and the approval of SIP submittals instead of through permit conditions. The Regional Office made use of the latter mechanism because the purpose of the CAA, to obtain emission reductions through the use of constant controls for the attainment and maintenance of the NAAQS, was well served. Concurrent with preparation of this notice, the APCD is developing and proposing rules, and soliciting public comments in preparation for the adoption of rules identified as:

Rule 67.15—Pharmaceutical and Cosmetic Manufacturing Operations

Rule 67.16—Graphic Arts Printing and Coating Operations

EPA is soliciting public comment on the rules. EPA has evaluated the subject regulations and finds them enforceable and generally consistent with the CTG control levels. Details of the EPA evaluation involve recordkeeping requirements, the low solvent graphic arts materials definition, and minor wording changes. Comments may be found in the previously referenced Rule Evaluations. VOC emission reductions of only 0.25 tons/day are expected to occur as a result of County adoption and EPA approval, as most sources are believed to be currently in compliance with such limits. These approvals will strengthen the federally enforceable SIP.

Proposed Action

This notice proposes to approve, under section 110 and Part D of the CAA, San Diego County APCD Rules 67.15 and 67.16, for control of VOC emissions from certain graphic arts printing and coating, and pharmaceutical and cosmetic manufacturing source operations in the County. This approval is contingent upon adoption of the rules by the APCD Board, submittal by the ARB to EPA as a SIP revision, and subsequent re-review by EPA. The re-review is to ensure that the rules submitted as SIP revisions are substantively equivalent to the current draft regulations proposed for San Diego County APCD Board adoption.

Regulatory Process

Under 5 U.S.C., section 605(b), I certify that this action 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 action from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401—7642.

Editorial Note: This document was received at the Office of the Federal Register August 30, 1988.

Dated: September 23, 1987.

John Wise,

Acting Regional Administrator.

[FR Doc. 88–20001 Filed 9–1–88; 8:45 am]

BILLING CODE 6560–50–M

Notices

Federal Register
Vol. 53, No. 171
Friday, September 2, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meetings

ACTION: Notice of Public Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committees on Administration, Governmental Processes, and Rulemaking of the Administrative Conference of the United States.

Committee: Committee on Administration.
Date: Friday, September 16, 1988 at 8:30 a.m.
Location: Library of the Administative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C.
Agenda: The committee will meet to discuss (1) a study by Philip Harter on possible agency rules to afford an appropriate degree of confidentiality for communications to ADR neutrals, and (2) research by Crowell and Moring into use of alternative means of dispute resolution by government contracting officers.
Contact: Charles Pou, Jr.

Committee: Committee on Governmental Processes.
Date: Thursday, September 22, 1988 at 3:00 p.m.
Location: Offices of Covington and Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. (11th Floor, Main Conference Room).
Agenda: The committee will discuss: (1) a study by Professor Henry H. Perritt, Jr. on computer-aided transmission and handling of regulatory documents; (2) a related draft report by Professor Susan G. Hadden on the use of computers in connection with the Emergency Response and Community Right to Know Act (Title III of the Superfund Amendment of 1986); and (3) a study by Professor Michael Baram on disclosure of risk information as a regulatory technique.
Contact: David Pritzker.

Committee: Committee on Rulemaking.
Date: Wednesday, September 28, 1988 at 10:00 a.m.
Location: Office of Jones, Day, Reavis, and Pogue, Metropolitan Square, 655 15th Street NW., 6th Floor Receptionist, Washington, DC (Use G Street entrance).
Agenda: The committee will meet to discuss a draft report by Professor Harold H. Bruff on presidential management of agency rulemaking.
Contact: Michael W. Bowers.

Public Participation: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Contact persons listed above, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, N.W., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: August 30, 1988.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 88–20067 Filed 9–1–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 88–113]

Disqualification Under the Horse Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice of disqualification.

SUMMARY: We are advising the general public and the horse industry of individuals who have been disqualified, under the Horse Protection Act, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction.

FOR FURTHER INFORMATION CONTACT: Frank W. Germaine, Senior Compliance Officer, Compliance and Enforcement Program Staff, VS, APHIS, USDA, Room 822, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5149.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Horse Protection Act (15 U.S.C. 1825(c)) provides authority for disqualifying individuals from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction. We are giving notice that the following individuals have been disqualified, for the times specified, from showing or exhibiting any horse, and from judging or managing any horse show, exhibition, sale, or auction:

Name and address	Disqualification period
Charles Alex Bobo, Shelbyville, TN.	12–1–1987 through 11–80–1989.
John Hornberger, Victoria, MS.	11–21–1987 through 11–20–1988.
Donald H. Campbell, Guthrie, KY.	4–15–1988 through 4–14–1989.
Linda Scrivner, Stafford, MO...	7–1–1988 through 6–30–1989.
Sonny Scrivner, Stafford, MO..	7–1–1988 through 12–31–1988.
Margarette Reeves, Shelbyville, TN.	7–24–1988 through 11–23–1988.

Any person who knowingly fails to obey a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation. Any horse show, exhibition, sale, or auction, or its management, which knowingly allows any disqualified person to judge, manage, or participate in a horse show, exhibition, sale, or auction in violation of a disqualification order shall be subject to a civil penalty of not more than $3,000 for each violation.

Done in Washington, DC, this 29th day of August, 1988.
James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 88–20061 Filed 9–1–88; 8:45 a m]
BILLING CODE 3410–34–M

[Docket No. 88–126]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing a Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection

Service concerning its authorization given to Fermenta Animal Health Company to conduct limited field trials of an experimental veterinary biological product consisting of a recombinant derived live virus pseudorabies vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies virus vaccine will not cause any significant impact on the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATE: The field trials will commence October 3, 1988.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to a request for authorization to conduct limited field trials using an experimental recombinant derived live pseudorabies virus vaccine produced by the Fermenta Animal Health Company, Kansas City, Missouri.

Before a veterinary biological product can be licensed under the Virus-Serum-Toxin Act (VSTA), (21 U.S.C. 151 *et seq.*), it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing vaccines under the VSTA. In the course of reviewing the testing protocol for the recombinant derived live pseudorabies virus vaccine, APHIS assessed the impact on the human environment of authorizing the manufacturer to conduct field testing of the product in five States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to facilitate two gene deletions in the pseudorabies virus (PRV) genome. One deletion destroyed the viral thymidine kinase (tk) gene which is required for the virus to replicate in the host's central nervous sytem and hence cause infection and disease. A second deletion destroyed a gene coding for a viral coat glycoprotein (gIII), thus allowing vaccinated animals to be distinguished from those infected with PR virus from other sources.

2. The recombinant derived pseudorabies vaccine virus was shown to be avirulent and yet fully capable of eliciting an immune response that protects pigs from the PRV, but unable to evoke antibodies to gIII which allows the differentiation between infected pigs and vaccinated ones.

3. Transmission of the vaccine virus derived from recombinant DNA techniques could not be demonstrated in that vaccine virus was not detected from nasal swabs taken from vaccinated pigs or from sentinel animals which were held as nonvaccinated controls. All sentinel animals remained fully susceptible to challenge with wild-type PRV.

4. Vaccination by the recombinant vaccine reduces replication and shedding of wild-type virus that could subsequently infect other animals in the herd. Therefore, the vaccine will reduce the dissemination of the virulent wild-type virus into the environment.

5. The tk gene deletion is a stable characteristic of the vaccine virus with a probability of reversion being essentially zero.

6. The wild-type PRV is found widely distributed in nature and it does not contain an oncongene or cancer-causing substance. Because the recombinant derived virus does not contain any new genetic information there is no likelihood of it being oncogenic.

7. The wild-type PRV is not considered pathogenic to man. Since the recombinant vaccine only differs from wild-type PRV by two deletions, it is also considered nonpathogenic to man.

8. The recombinant derived modified live virus vaccine was shown to be safe in safety and efficacy studies which were carried out in isolation. The results of these experiments demonstrate that the vaccine is safe and effective in a variety of laboratory animal model systems.

Based on the foregoing, APHIS has determined that the field testing of the recombinant derived modified live pseudorabies virus vaccine would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 30th day of August, 1988.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–20060 Filed 9–1–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 71273–7273]

Sputtering Equipment; Foreign Availability Assessment and Solicitation of Public Comments

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of finding of foreign availability and request for comments.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the Export Administration Act of 1979, as amended (EAA), to request and review claims of foreign availability on items controlled for national security purposes.

The OFA completed an assessment on magnetically-enhanced sputtering equipment that is controlled under paragraph (b)(1)(vi) of the "List of Equipment Controlled by ECCN 1355A" in ECCN 1355A on the Commodity Control List (Supplement No. 1 to 15 CFR 399.1). This equipment incorporates a cathode assembly having an integral magnetic structure for enhancing the plasma intensity. Based on the assessment, the Department of Commerce found foreign availability for this commodity.

Despite the finding of foreign availability for magnetically-enhanced sputtering equipment abroad, the

President, in conformance with the national security override provisions of the EAA, has determined that the absence of export controls on it would be detrimental to the national security of the United States. Therefore, the President has directed that controls on magnetically-enhanced sputtering equipment be maintained. The President has also directed the Secretary of State to negotiate with the governments of appropriate foreign countries to remove the sources of foreign availability for the commodity, as prescribed by law.

The Department of Commerce will issue a statement of the economic impact of the decision to maintain controls on the magnetically-enhanced sputtering equipment. To assist the Department in the preparation of such a statement, comments are requested from U.S. manufacturers of magnetically-enhanced sputtering equipment regarding the economic impact of maintaining controls on such equipment. The specific types of information requested are described in the "Supplementary Information" portion of this document.

DATE: Comments should be received by November 1, 1988.

ADDRESS: Written comments should be sent to: John Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John Pastore, Office of Foreign Availability, Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION: If the Office of Foreign Availability receives substantive new evidence affecting the foreign availability determination on magnetically-enhanced sputtering equipment, the assessment will be reevaluated. Inquiries concerning the scope of this assessment may be directed to OFA at the address given above.

The period for submission of comments on the economic impact of maintaining controls on the magnetically-enhanced sputtering equipment will close November 1, 1988. The Department will consider all comments received before the close of the comment period in developing the economic impact statement. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured.

The Department requests that comments from U.S. manufacturers of magnetically-enhanced sputtering equipment contain general statements of the economic impact of maintaining controls, in terms of sales, employment and profitability. Where appropriate, comments should be made relative to the specific company producing magnetically-enhanced sputtering equipment as well as to the industry as a whole. Comments will be used to supplement other publicly available information needed to analyze the economic effects of maintaining current U.S. controls on the trade of this equipment. Information for which confidential treatment is required should be submitted separately as described below.

Specifically, the Department requests that comments contain the following information relative to magnetically-enhanced sputtering equipment in 1987 and projections for 1988:

1. Estimate of total world sales, including sales to both Eastern bloc and other countries; estimates should be both in terms of dollar sales and number of units;

2. Description of market demand, including distribution of sales by country; type of buyer (i.e., industrial, government); and by use application;

3. Description of market supply, including distribution of production and potential capacity by country;

4. Degree to which production facilities are dedicated exclusively to the production of magnetically-enhanced sputtering equipment;

5. Price level and range of prices for equipment; is there a significant price differential between U.S. and non-U.S. producers? Could prices be substantially reduced if production levels were increased (i.e., do significant production economies of scale exist)?

6. Are there significant quality differences among suppliers? Is there a significant quality difference between equipment produced by the U.S. and outside of the U.S.? If significant differences exist, description of their nature;

7. Primary components and/or materials used in the manufacture of equipment and source of components and/or materials (i.e., domestic or foreign);

8. Estimate of number of employees required per million dollars of sales and number of production workers required per million dollars of sales; what occupational skill levels are generally required by production workers?

9. To what extent do export restrictions on this equipment affect research and development (R&D) activities in terms of total R&D expenditures and focus of R&D activities?

10. Estimate of man-hours needed to complete export forms for sale of equipment to non-Eastern bloc countries.

[OMB Control No. 0625–0195]

Public comments will be a matter of public record and will be available for public inspection and copying except those comments that are accorded confidential treatment, as described below. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Department will accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to the Bureau of Export Administration (BXA) on sheets of paper separate from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information". The Bureau of Export Administration will either accept the submission in confidence or, if the submission fails to meet the standards for confidential treatment, will return it. A non-confidential summary must accompany such submission of confidential information. The summary will be made available for public inspection.

Information accepted by the Bureau of Export Administration as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 552(b) (3) and (4)) will be kept confidential and will not be available for public inspection, except as authorized by law.

The public record of comments received on the economic impact of maintaining controls on the magnetically-enhanced sputtering equipment will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4086, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

Dated: August 30, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-20030 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration, Import Administration

[A-351-803]

Initiation of Antidumping Duty Investigation; Shock Absorbers From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 23, 1988, and we will make our preliminary determination on or before January 17, 1989.

EFFECTIVE DATE: September 2, 1988.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Louis Apple, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-2613 or (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On August 9, 1988, we received a petition filed in proper form by the Monroe Auto Equipment Company of Monroe, Michigan, on behalf of the industry in the United States which manufactures shock absorbers. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleges that imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioner's estimate of United States price was based on a Brazilian manufacturer's price list to a warehouse distributor in the United States. Petitioner made deductions for inland freight in Brazil and the U.S., ocean freight, insurance, brokerage and customs charges in Brazil, warehousing costs, promotional expenses, warranty costs, inventory returns, credit expense, cash discounts, and U.S. duty.

Petitioner based foreign market value on prices to a warehouse distributor in Brazil. Deductions were made for sales tax, credit expense, freight, insurance, advertising and promotion expense, warranty cost, and inventory carrying cost.

Based on a comparison of United States price and foreign market value, petitioner alleges dumping margins ranging from 399 to 950 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on shock absorbers from Brazil and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of shock absorbers from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 17, 1989.

Scope of Investigation

The products covered in this investigation are shock absorbers and parts thereof, as provided for in item 692.3282 of the *Tariff Schedules of the United States Annotated (TSUSA)* and currently classifiable under Harmonized System (HS) item number 8703.80.50. The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules will be fully converted to this Harmonized System (HS). Until that time, the Department will be providing both the appropriate TSUSA item number(s) and the appropriate HS item number(s) with its product descriptions. As with the TSUSA, the HS item numbers are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all U.S. Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

For purposes of this investigation, a shock absorber is a cylindrically-shaped motor vehicle suspension component made essentially of sheet steel which is designed to limit the motions, vibrations, and oscillations that affect a vehicle due to uneven road surfaces, centrifugal forces, or other disturbances. This investigation covers all conventional front and rear shock absorbers manufactured in Brazil that are suitable for use in front and rear motor vehicle suspension systems. The investigation also covers all parts, components, and subassemblies manufactured in Brazil for use in the final assembly of shock absorbers. Covered parts include, but are not limited to, pistons, rods, valving components, reserve tubes, pressure tubes, rod guides, base cups, and mounting stems, loops, and bushings.

The investigation does not cover other types of dampers such as MacPherson struts, MacPherson strut cartridges, steering dampers, engine dampers, trailer stabilizers, hatchback supports, exercise dampers, and other types of dampers which are not suitable for use in motor vehicle suspension systems.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by September 23, 1988, whether there is a reasonable indication that imports of shocks absorbers from Brazil materially injure, or threaten material injury to, a U.S.

industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Jan W. Mares,

Assistant Secretary for Import Administration.

August 29, 1988.

[FR Doc. 88-20044 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

POSIX; Portable Operating System Interface for Computer Environments; System Implementors; Workshop

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: The Institute for Computer Sciences and Technology at the National Bureau of Standards (NBS) announces a workshop to discuss implementation issues related to the Proposed Federal Information Processing Standard (FIPS) for POSIX (Portable Operating System Interface for Computer Environments), including planned additions to the standard for Shell and Tools, System Administration, and User Interfaces (X Windows System). The workshop is intended for organizations which implement and build software systems for the government.

DATES: The workshop will be held on September 22 and 23, 1988 at the National Bureau of Standards in Gaithersburg, MD.

ADDRESS: To register or to receive a brochure on the workshop, contact: Workshop for POSIX System Implementors, ATTN: Debbie Jackson, National Bureau of Standards, Building 225, Room B-266, Gaithersburg, MD 20899, Telephone: (301) 975-3295.

FOR FURTHER INFORMATION CONTACT: James A. Hall, (301) 975-3273.

SUPPLEMENTARY INFORMATION: Attendance at the workshop is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee of $60 will be charged for attending the workshop. Participants are expected to make their own travel arrangements and accommodations. NBS reserves the right to cancel any part of the workshop.

Ernest Ambler,

Director.

Date: August 29, 1988.

[FR Doc. 88-19977 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council and its advisory entities will convene public meetings, September 19-22, 1988, at the Westin South Coast Plaza, 666 Anton Boulevard, Costa Mesa, CA, as follows:

Council—will convene September 21 at 9 a.m., with a closed session (not open to the public), to discuss litigation, personnel, and other appropriate matters. At 10 a.m., the Council will convene its open session to consider administrative matters, groundfish management issues, i.e. inseason management adjustments, preliminary management specifications for 1989, a progress report for 1989 sablefish allocation discussions, limited entry, and the schedule for completing Amendment 4 to the fishery management plan (FMP). There also will be a status report on the Pacific halibut fishery.

There will be a public comment period on September 21 at approximately 4 p.m., to hear comments on issues not on the agenda. Public comments on agenda items will be heard during the Council's discussion of each issue.

On September 22 the Council will convene at 8 a.m., to address habitat matters and salmon management issues. Salmon issues include review of the 1988 fisheries, FMP amendment for 1989, scoping session for amending the FMP in 1990, review of the March salmon process, salmon research needs, review of Indian and non-Indian catch sharing, and feasibility of methodology review for Washington coho salmon stocks.

Scientific and Statistical Committee (SSC)—will convene September 19 at 1 p.m., to address issues on the Council agenda and will reconvene September 20, at 8 a.m.

Council Performance Select Group Subcommittee—will convene September 20 at 8 a.m., to consider changes to the March salmon meeting process.

Groundfish Select Group—will convene September 20 at 1 p.m., to consider inseason adjustments to groundfish regulations and 1989 measures and catch limits.

Habitat Committee—will convene September 20 at 1 p.m., to consider relevant and timely habitat issues for fisheries under Council jurisdiction.

Budget Committee—will convene September 20 at 5 p.m., to review 1988 and 1989 funding for Council operations.

Detailed agendas for the above meetings will be available to the public after September 9. For further information contact Lawrence D. Six, Exectutive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW First Avenue, Portland, OR 97201; telephone: (503) 221-6352.

Dated: August 29, 1988.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-20011 Filed 9-1-88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 495]

Marine Mammals; Modification of Permit; Dr. Susan Shane (P127B)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 495 issued to Dr. Susan Shane, 250 Cottini Way, Santa Cruz, California 95060, on April 11, 1985, (50 FR 15232) is modified in the following manner:

Section B.6 is replaced by:

6. This Permit is valid with respect to the taking authorized herein until December 31, 1990.

This modification becomes effective August 17, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–20012 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 573]

Marine Mammals; Permit Modification; Dr. William A. Watkins (P70C)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 573 issued to Dr. William A. Watkins, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543, on November 2, 1986 (51 FR 43422), as modified on December 31, 1987 (53 FR 9348) is further modified as follows:

Section B.3 is revised as:

3. The Holder shall suspend tagging activities if: a) an animal is killed, injured or develops an infection as a result of the authorized activities; or b) if there is any uncertainty as to the survival or health of more than one of the previously radio tagged animals. The Holder may proceed with subsequent tagging activities provided that a) following a tagging attempt, part or all of the tag antenna can be seen, the radio signal is received as would be expected if the tag were properly implanted, or the tag is seen to miss the target animal; and b) further tagging efforts be suspended pending consultation with the National Marine Fisheries Service and authorization to resume tagging the second time that condition "a" is not met. Authorization to continue research activities in subsequent years be contingent upon submission and approval of a report on the preceding year's activities which shall include a summary and description of the information and rationale used to conclude that each tagged whale was not harmed; and the basis upon which the decision to proceed with the subsequent tagging activities was made.

This modification became effective on August 25, 1988.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida, 33702.

Date: August 25, 1988.

Nancy Foster,

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88–20013 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products From the Republic of Korea; Correction

August 30, 1988.

In footnote 3 of the letter to the Commissioner of Customs published in the **Federal Register** on January 5, 1988 (53 FR 161), add TSUSA number 355.3500 to the TSUSA's for Category 229–F.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20028 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

August 30, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 7, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of the Republic of Singapore, the current designated consultation levels are being increased for Categories 222 and 442.

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). Also see 52 FR 49188, published on December 30, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 30, 1988.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 24, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on September 7, 1988, the directive of December 24, 1987 is being amended to increase the limits for cotton, wool and man-made fiber textile products in the following categories:

Category	Amended 12-mo limit [1]
222	450,000 pounds.
442	11,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20029 Filed 9–1–88; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 3, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr., (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 1 and July 15, 1988, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 24992 and 26847) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby addded to Prodcurement List 1988:

Lanyard, Camouflage
1080-000-571-5015
Strap Assembly, Litter
1680-00-878-6964 BZ

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 88-20019 Filed 9-1-88; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1988; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1988 commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

Comments Must Be Received on or Before: October 3, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: E.R. Alley, Jr. (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Pad, Writing Paper
7530-01-124-5660 (GSA Regions 9, 10 and New Cumberland Army Depot)
7530-01-131-0091 (GSA Regions 2, 9, 10 and New Cumberland Army Depot)
Slacks, Women's
8410-01-029-6690
8410-00-591-1165
8410-00-591-1181
8410-00-591-1182
8410-00-591-1185
8410-00-591-1186
8410-00-591-1188
8410-00-591-1189
8410-00-591-1191
8410-00-591-1196
8410-00-591-1197
8410-00-591-1201
8410-00-591-1202
8410-00-591-1203
8410-00-591-1204
8410-00-591-1205
8410-00-591-1206
8410-00-591-1215
8410-00-591-1217
8410-00-591-1228
8410-00-591-1232
8410-00-591-1233
8410-00-591-1234
8410-00-591-1235
8410-00-591-1236
8410-00-591-1237
8410-00-591-1238
8410-00-591-1239
8410-00-591-1248
8410-00-591-1251
8410-00-591-1261
8410-00-591-1263
8410-00-591-1290
8410-00-591-1292
8410-00-591-1293
8410-00-591-1300
8410-00-591-1311
8410-00-591-1320
8410-00-591-1337
8410-00-591-1352
8410-00-591-1357
8410-00-591-1358

Service

Commissary Shelf Stocking and Custodial Service
Fort Monmouth, New Jersey

E.R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 88-20020 Filed 9-1-88; 8:45 am]
BILLING CODE 6820-33-M

COMMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the Federal Register a proposal of the Chicago Mercantile Exchange ("CME") for designation as a contract market in futures on the Morgan Stanley Capital International United Kingdom Stock Index. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before September 19, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Morgan Stanley United Kingdom Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading

Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: On May 19, 1988, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969). In an August 12, 1988 letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb,, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on August 30, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–20033 Filed 9–1–88; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Personnel Security Questionnaire (Industrial); DD Form 49; and OMB Control Number 0704–0002.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour, 30 minutes.

Frequency of Response: One-time basis.

Number of Respondents: 30,000.

Annual Burden Hours: 45,000.

Annual Responses: 30,000.

Needs and Uses: The Personnel Security Questionnaire (Industrial), DD Form 49, is used to obtain background information for personnel security investigative and evaluate purposes in order to determine the security eligibility of contractor personnel for assignment to a sensitive position and/or access to information classified TOP SECRET. The completed form is routinely used by the Defense Investigative Service to determine the scope of a personnel security investigative. It is also used to provide evaluators or adjudicators with personal history information relevant to personnel security determinations. The information contained in the form may also be disclosed to other Federal agencies that are authorized under specific statutory or Executive authority to make personnel security determinations.

Affected Public: Individuals/households.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 30, 1988.

[FR Doc. 88–20065 Filed 9–1–88; 8:45 am]

BILLING CODE 3810–01–M

National Guard Bureau; Availability of an Environmental Impact Statement (EIS)

AGENCY: National Guard Bureau, DoD/Minnesota Department of Military Affairs, DoD.

ACTION: Notice of availability of an environmental impact statement; proposed mission expansion/multiple construction at Camp Ripley Army National Guard Training Site, Minnesota.

Background

Camp Ripley Army National Guard Training Area is a state owned, state operated, federally funded installation. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Guard Bureau and Minnesota Department of Military Affairs have, acting as co-lead agencies, prepared a Final Environmental Impact Statement on the proposed master plan mission expansion/multiple construction at Camp Ripley, Minnesota. On July 22, 1986, a Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register**. A scoping meeting (in accordance with the Council on Environmental Quality Regulations (40 CFR 1500–1508)) was conducted on July 31, 1986, at Morrison County Courthouse, Little Falls, Minnesota, to identify significant issues related to the proposed master plan mission expansion/multiple construction at Camp Ripley. A Draft EIS was prepared and a Notice of Availability was published in the **Federal Register** on March 18, 1988. Public comments were received between March 18, 1988 and May 18, 1988. The public hearing was held at Camp Ripley, Minnesota on April 12, 1988. Comments and responses are included in the Final EIS.

Action

The proposed action includes renovation and rehabilitation of existing facilities, construction of new facilities, range improvements, development of new ranges, and associated maneuver areas, and a potential for increased training site utilization. The Final EIS

addresses direct and indirect environmental impacts, both beneficial and detrimental. Environmental impacts addressed include those affecting air quality, noise, physical setting, natural resources, land use, waste disposal, water resources, cultural resources, and social and economic resources.

In addition to the proposed actions, three alternatives were considered in the Final EIS:

(a) No Action (Status Quo).

(b) Modification/Alteration of Proposed Action.

(c) Conduct actions at another location.

Document Availability

The identification of preferred alternatives in the Final Environmental Impact Statement does not constitute a final decision. The Final EIS and any comments received will be used by the Army National Guard to prepare a Record of Decision. Copies of the Final EIS may be obtained from: Minnesota Department of Military Affairs, ATTN: John F. Ebert, Facilities Management Office, P.O. Box 348, Little Falls, Minnesota 56345–0348, or telephone (612) 632–6631.

Lewis D. Walker,

Deputy for Environment, Safety, and Occupational Health OASA (I&L).

[FR Doc. 88–19874 Filed 9–1–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Army Laboratory Command; Availability of a Rechargeable Li/$LiCoO_2$ Electrochemical Cell; Exclusive Licensing

In accordance with 37 CFR 404.7 announcement is made of the availability of a rechargeable Li/$LiCoO_2$ electrochemical cell containing an electrolyte of $LiAsF_6$ in dimethylcarbonate mixtures with methylformate for exclusive licensing. Inventors at the U.S. Army Electronics Technology and Devices Laboratory (USAET&DL) have been awarded a patent on a new lithium rechargeable electrochemical cell comprising lithium as the anode, the lithium intercalating compound Li_xCoO_2 ($o<x<1$) as the cathode, and an electrolyte of 1 to 2 mol dm^{-3} $LiAsF_6$ in dimethylcarbonate mixtures with methylformate in which the mass percent of the dimethylcarbonate component can vary from 25 mass percent to 100 percent. The rights to this electrochemical system belong to the United States Government.

The new rechargeable electrochemical cell utilizes an electrolyte which provides increased solvent stability with both the Li anode and $LiCoO_2$ cathode over a wide voltage range of −1.0V to +5.0V versus Li. The electrolyte also provides significantly improved cell cycle life due to the improved lithium plating efficiency (> 85%) of the solvent mixtures. The research and development of this rechargeable electrochemical cell has been completed such that working prototypes have been built and successfully demonstrated. Prototype results were obtained for button cells (2.3 cm diameter x 0.3 cm thickness) cycled between 4.3V and 3.5V at 25°C. Nominal cell capacities were 70 mAh at an average load potential of 3.9V. Practical energy densities of 95 Wh/kg and 220 Wh/l have been obtained for discharge rates up to C/6.5 (11 mA). High charging rates up to 2 mA have also been demonstrated without dendritic shorting.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and section 207 of title 35, United States Code, the Department of the Army as represented by USAET&DL wishes to exclusively license rights to this electrochemical system to a party interested in manufacturing and selling a rechargeable Li/$LiCoO_2$ electrochemical cell.

FOR FURTHER INFORMATION, CONTACT: Mr. Edward J. Plichta, U.S. Army Electonics Technology and Devices Laboratory, ATTN: SLCET–PR, Fort Monmouth, NJ 07703–5000; (201) 544–2691.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc 88–20006 Filed 9–1–88; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Next Generation Computer Resources will meet on September 22–23, 1988. The meeting will be held at the Hughes Aircraft Company, Arlington, VA. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on September 22 and 23, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members on computer resources. The agenda will include discussions on Navy computer needs, submarine combat systems, government computer standards, commercial computer standards and OSD/Joint Service Coordination. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: August 30, 1988.

Jane M. Virga,

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

[FR Doc. 88–19974 Filed 9–1–88; 8:45 am]

BILLING CODE 3810–AE–M

Performance Review Board Membership

Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRB's). The purpose of the Boards is to provide fair and impartial review of the SES performance appraisals prepared by the senior executive's immediate and second level supervisor; to make recommendations to the Secretary of the Navy regarding acceptance or modification of the performance rating, transfer, reassignment, or removal from the SES of any senior executive whose performance is considered to be unsatisfactory; and to make recommendations for monetary performance awards. Composition of the particular Boards will be determined on an ad hoc basis from among individuals listed below:

Ailes, R.H. RADM
Angrist, E.P. Mr.
Ashe, O.R. Mr.
Baker, III, A.D. Mr.
Beach, C.P. Mr.
Bergquist, K. The Honorable
Blickstein, I.N. Mr.
Calvert, J.F. RADM
Cammack, E.G. Mr.
Campbell, JR, W. Mr.
Cantrell, W.H. RADM

Cipriano, J.R. Mr.
Clark, C.C. Ms.
Clark, C.H. Mr.
Clautice, W.G. Capt
Coffey, K.J. Dr.
Coffey, T. Dr.
Collie, J.D. Mr.
Comstock, E.T. Mr.
Conn, R.H. The Honorable
Costello, J.N. Mr.
Cropsey, S. Mr.
Dalrymple, J.R. RADM
Deprete, A. Mr.
Dilworth, G. Mr.
Ditrapani, A.R. Mr.
Dixson, H.L. Mr.
Doak, R. Mr.
Donalson, E. Mr.
Eastin, K.E. Mr.
Esau, A.C. Capt
Everett, D.G. Mr.
Faught Jr, T.E. The Honorable
Filipiak, F.L. RADM
Ford, F.B. Mr.
Forssell, A.G. Mr.
Fox, C.E. Mr.
Friichtenicht, R RADM
Gaines, J.E. Mr.
Geiger, C.G. Mr.
Goodman, R.O. Mr.
Gorsey, C.V. Mr.
Grimes, A.B. Mr.
Hallex, R.A. Mr.
Harner, P.A. Mr.
Hathaway, D.L. Mr.
Haver, R.L. Mr.
Haycock, T.J. Mr.
Hendrickson, D. Capt
Higgins, M.L. Mr.
Hitch, P.M. Mr.
Hoffman, G.C. Mr.
Horne, R.B. Radm
Houley, W. Radm
Ilg, R.P. Radm
Johnson, A.E. Mr.
Johnson, R.V. Mr.
Keane, J.J. Mr.
Keightley, G. Mr.
Kinney, E.T. Mr.
Kiss, R.K. Mr.
Knudsen, R. Dr.
Lafande, R.A. Dr.
Leuschner, R. Radm
Lindahl, W.H. Mr.
Loftus, S.F. Radm
Mackinnon, III, M. Radm
Malatino, R.E. Mr.
Marchesani, M.F. Mr.
Marsh, J.W. Mr.
Masciarelli, J.R. Mr.
Matteo, D.A. Mr.
Meletzke, D.M. Ms.
Messere, E. Mr.
Moore, R.M. Radm
Moore, R.P. Mr.
Murphy, P.M. Mr.
Myatt, J.M. Bgen
McElhaney, M.K. Mr.
McManus, C. Mr.
Nathan, H.J. Mr.
Nemfakos, C.P. Mr.
Nickell, Jr, J.R. Mr.
O'Connor, J.J. Mr.
Olsen, M.A. Ms.
Panek, R.L. Mr.
Phelps, F.A. Mr.
Pyatt, E.A. The Honorable
Quast, H. Radm
Rae, W.G. Mr.
Reed, J. Mr.
Renfro, J.G. Mr.
Roark, Jr, J.E. Mr.
Robinson, B.B. Dr.
Rojas, R.R. Mr.
Roth, A.J. Mr.
Rumpf, R.L. Mr.
Saalfeld, F. Dr.
Sansone, W. Mr.
Saul, E.L. Mr.
Schaefer, Jr, W. Mr.
Schaeffer, T.W. Mr.
Schneider, P.A. Mr.
Seely, J.M. Radm
Selwyn, P. Dr.
Shaffer, R.L. Mr.
Shepard, J.J. Dr.
Sheridan, F.L. Mr.
Shrader, J.N. Mr.
Silva, E.A. Dr.
Smith, W.H. Dr.
Steele, R.H. Mr.
Sterns, F.S. Mr.
Stratton, A.M. Ms.
Swofford, F.W. Mr.
Tarbell, W.A. Mr.
Taussig, Jr, J.K. Mr.
Thomas, R.O. Mr.
Tiedgen, D.W. Mr.
Topping, R. Radm
Turnquist, C.J. Mr.
Wagner, G.F.A. Capt
Walsh, R.M. Radm
Weiss, A.R. Mr.
Whalen, J.R. Mr.
Wilcox, H.J. Mr.
Wilgenbusch, R. Radm
Willoughby, W.J. Mr.
Wilson, J.R. Radm
Wyant, F.E. Mr.

August 30, 1988.

Jane M. Virga,

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

[FR Doc. 88-19975 Filed 9-1-88; 8:45 am]

BILLING CODE 3810-AEM-M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 26 and 27, 1988.

ADDRESS: The Council will meet on September 26 in the Conference Room of Alumni Memorial Residence I, Johns Hopkins University, 3400 North Charles Street, Baltimore, Maryland 21218, from 9 a.m. to 5 p.m. The Council will meet on September 27 in the Board Room, Shriver Auditorium, Johns Hopkins University, from 9 a.m. to 4 p.m..

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202-7579, (202) 732-1205.

SUPPLEMENTARY INFORMATION: The Council is authorized by section 405 of the 1972 Education Amendments, Pub. L. 92-318, as amended by the Higher Education Amendments of 1986 (Pub. L. 99-498, 20 U.S.C. 1221e. The Council advises the President, the Secretary of Education, and the Congress on policies and activities carried out by the Office of Educational Research and Improvement.

Meetings of the Council are open to the public. The agenda for September 26 includes briefings on the education of the talented and gifted by administrators of the Center for the Advancement of Academically Talented and Gifted Youth, and reports on research and development activities of the Center for Research on Elementary and Middle Schools.

On September 27 the Council will formulate its recommendations to the President, the Secretary of Education and the Congress, its agenda for Fiscal Year 1989, and consider other Council business.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street SW., Room 4076, Washington, DC 20202-7579, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Dated: August 30, 1988.

Mary Grace Lucier,

Executive Director.

[FR Doc. 88-20043 Filed 9-1-88; 8:45 am]

BILLING CODE 4000-01-M

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education.

ACTION: Public Meeting of the Council.

SUMMARY: This notice set forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under Section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: September 23, 1988—9:00 a.m. to 4:00 p.m.

ADDRESS: Harbor View Inn, 28 West Cabrillo Blvd., Santa Barbara, CA 92101, Conference Room, (805) 963-0780.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Review of the National Awareness Campaign and Council Initiatives.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 330 C Street SW., Suite 4080, Washington, DC 20202, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC August 30, 1988.

Joyce Winterton,

Executive Director.

[FR Doc. 88-20069 Filed 9-1-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Award a Grant Agreement to CBI Research Corporation

AGENCY: U.S. Department of Energy (DOE).

ACTION: The U.S. DOE announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of grant number DE-FG01-88CE26559 for construction and testing of a laboratory scale ice slurry district cooling system.

SUMMARY: The U.S. DOE, Office of Building and Community Systems, Building Services Division, has prepared a request to fund an application submitted by CBI Research Corporation. This project is one of six projects previously selected by a competitive solicitation, issued in 1986, which contained a provision for follow-up of complementary research. The work to be performed is a modification and expansion of the facility previously constructed. Storage and heat exchangers will be added to the test facility to replicate a complete district cooling system. The compressor and the pump will be replaced and a vessel used in the production process will be redesigned. The pilot plant will incorporate the CBI direct freeze process which efficiently produces ice slurry by directly contacting water with refrigerant.

Eligibility

Award of this effort is being restricted to CBI Industries, Inc. due to the following:

a. CBI has built a unique facility for testing ice slurries.

b. CBI has the knowledge and expertise in the testing of ice slurries.

c. CBI has developed a unique technique, and is the only entity that can produce ice through the direct freeze process.

d. The proposed work, to test the direct freeze process for district cooling applications, is an integral part of the ice slurry testing completed under a previous grant to to this entity.

e. Based on our cost evaluation, the proposed work is advantageous to the government. It is estimated that CBI will perform the research at least cost to the Government in terms of funding and time considerations.

f. The proposed modification of the facility is complementary and consistent with the advanced fluids program objectives.

The term of this grant will be for one (1) year.

FOR FURTHER INFORMATION CONTACT: Rosemarie Marshall, MA-453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1061.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-20068 Filed 9-1-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-558-000 et al.]

Niagara Mohawk Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 29, 1988.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER88-558-000]

Take notice that on August 10, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing as an initial rate schedule, an Agreement between Niagara Mohawk and the County of Orleans (Public Body) dated July 21, 1988. Niagara Mohawk proposes an effective date of October 9 for the Agreement.

This Agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible Customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk states that the Agreement is an initial rate schedule because it is a new service to a new customer. Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations

between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power.

Copies of this filing were served upon the Public Service Commission of the State of New York and the County of Orleans.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER88-577-000]

Take notice that on August 24, 1988, Southern California Edison Company (Edison) tendered for filing a change of rates for transmission service as embodied in Edison's agreements with the following entities which reflects a reduction in rate of return from 11.24 percent to 10.75 percent and changes to depreciation rates authorized by the California Public Utilities Commission (CPUC) to be made effective January 1, 1988.

Rate Schedule FERC No.

1. City of Anaheim—130, 164, 193, 200, 204, 208
2. City of Azusa—160, 189, 196, 201, 209
3. City of Banning—159, 190, 199, 210
4. City of Colton—162, 191, 202, 211
5. City of Riverside—129, 165, 192, 194, 198, 205, 212
6. City of Vernon—149, 154.7, 172, 195, 207
7. Contract Rate TN—FPC Electric Tariff Original Volume No. 1

Edison requests waiver of the Commission's prior notice requirement and an effective date for these rate changes of January 1, 1988.

In addition, Edison tendered for filing exhibits supporting changes in the presently authorized filed rates for transmission service under Rate Schedule FERC No. 159 (Banning) and 200 (Anaheim) filed in Docket No. ER87-516-000.

The presently authorized filed rates for Rate Schedule FERC No. 159 did not contain the Vincent Point of Receipt, and Rate Schedule FERC No. 200 was calculated using a 230 kV path instead of a new 500 kV path.

Edison requests waiver of the Commission's prior notice requirement and an effective date retroactive to January 1, 1987, for the correction of Rate Schedule FERC No. 159 and an effective date retroactive to July 1, 1987, for the correction of Rate Schedule FERC No. 200.

In addition, Edison placed into operation the Devers-Valley-Serrano 500 kV T/L and related 500 kV facilities on July 22, 1987, which provides a new path for both Anaheim's and Azusa's nonfirm energy purchases from Palo Verde switchyard to their respective points of delivery.

Edison requests waiver of the Commission's prior notice requirements and tenders for filing the revised ITS rates FERC Nos. 130 and 160 with an effective date retroactive to July 1, 1988.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 12, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20036 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission; August 30, 1988

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Filing: Transfer of License.

b. Project No.: 1986-002.

c. Date Filed: August 19, 1988.

d. Applicants: CP National Corporation and Oregon Trail Electric Consumers Cooperative, Inc.

e. Name of Project: Rock Creek Project.

f. Location: On Rock Creek, in Baker County, Oregon. The project occupies lands of the United States within the Whitman National Forest.

g. Filed Pursuant to: Federal Power Act. 16 U.S.C. § 791(a)-825(r).

h. Applicant Contacts:

William J. Madden, Jr., Esq., Donald K. Dankner, Esq.; Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, D.C. 20005-3502; (202) 371-5700

Henry Lorenzen, Corey, Byler, Rew, Lorenzen & Hojem, P.O. Box 218, Pendleton, OR 97801, (503) 276-3331

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: September 16, 1988.

k. Description of Application: CP National Corporation (transferor) proposed to transfer its license issued on June 26, 1951, to Oregon Trail Electric Consumers Cooperative, Inc. (transferee) in order to sell all of its electric properties located in Oregon to the transferee. The transferee is a cooperative organized pursuant to the provisions of the Oregon Cooperative Corporation Act.

1. This notice also consists of the following standard paragraphs: B & C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments. A protest, or a motion to intervene in accordance with the requirements of the Rule of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTESTS" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division or Project Review, Office of Hydropower Licensing, Federal Energy Regulatory

Commission, Room 204–RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88–20035 Filed 9–1–88; 8:45]

BILLING CODE 6717–01–M

[Docket Nos. CP88–692–000 et al.]

Trunkline LNG Co. et al.; Natural Gas Certificate Filings

August 30, 1988.

Take notice that the following filings have been made with the Commission:

1. Trunkline LNG Company

[Docket No. CP88–692–000]

Take notice that on August 18, 1988, Trunkline LNG Company (TLC), P. O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP88–692–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to amend its certificate of public convenience and necessary to reflect TLC's proposed release of approximately 51 acres of land leased by TLC, which constitutes part of the buffer areas adjacent to the site of TLC's LNG terminal facilities at Lake Charles, Louisiana, all as more fully set forth in the application which is on file with the commission and open to public inspection.

TLC states that the agreement for leases of such acreage provides for restrictions on use of the land consistent with the current safety regulations of the Department of Transportation. TLC further states that it is intended that the subject land will be used to relocate or expand the storage area and railroad right-of-way for an existing, adjacent, cargo handling operation, Trailer Maritime Transport Corporation, to facilitate commencement of construction of facilities to provide a new home post for several United States Navy vessels.

No construction of facilities or change of facilities or operation is proposed by TLC herein. Upon effectuation of this release, TLC will receive a pro-rata refund of its lump-sum payment, which will be approximately $175,000.

Comment date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Gas Gathering Corporation

[Docket No. CP88–707–000]

Take notice that on August 22, 1988, Gas Gathering Corporation (GGC), Post Office Box 519, Hammond, Louisiana 70404, filed in Docket No. CP88–707–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Transcontinential Gas Pipe Line Corporation (Transco) in Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GGC states that the service, which was authorized by the Commission in Docket No. CP82–203, is no longer required because the wells supplying the natural gas being transported have been plugged and abandoned. GGC explains that it was notified on September 3, 1987, by Bintliff Properties, the producer, that the wells had ceased to produce gas. It is stated that no customers would have their service terminated as a result of the proposed abandonment and that the impact on Transco would be a direct function of the loss of production sources due to depletion.

Common date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP88–696–000]

Take notice that on August 18, 1988, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP88–696–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to transport natural gas on behalf of Loutex Energy, Inc. (Loutex), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern requests authorization to transport on behalf of Loutex, on an interruptible basis, up to 120,000 dt equivalent of natural gas per day. Midwestern, it is said, would receive such gas at the United States-Canadian border at Emerson, Manitoba, and redeliver gas to Loutex at Midwestern's interconnection with ANR Pipeline Company near Marshfield, Wisconsin.

For this transportation service, Midwestern represents that it would charge Loutex a transportation rate as set forth in Midwestern's rate schedule IT–2.

Midwestern avers that the transportation agreement would remain in force for a primary term of two years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Comment date: September 20, 1988, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commisison on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting secretary.

[FR Doc. 88–20037 Filed 9–1–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM88–1–15–000]

Mid Louisiana Gas Co.; Proposed Change of Rates

August 29, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on August 24, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas

Tariff the following Tariff Sheets to become effective October 1, 1988:

Superseding

Sixty-Fifth Revised Sheet No. 3a
Substitute
Sixty-Fourth Revised Sheet No. 3a
Fifth Revised Sheet No. 3a.1
Substitute
Fourth Revised Sheet No. 3a.1

Mid Louisiana states that the purpose of the filing of Sixty-Fifth Revised Sheet No. 3a and Fifth Revised Sheet No. 3a.1 is to reflect the collection of the Annual Charges imposed by Section 382 of the Commission's Regulations.

Mid Louisiana states this filing is in accordance with section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's 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 sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before September 6, 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. 88-20038 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-163-001]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

August 30, 1988.

Take notice that on August 25, 1988, South Georgia Natural Gas Company (South Georgia) tendered for filing the following original and revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of June 1, 1988:

Substitute First Revised Sheet No. 31A
Substitute Seventh Revised Sheet No. 32
Substitute First Revised Sheet No. 32A
Substitute Second Revised Sheet No. 32B
Substitute Original Sheet No. 34.2
Original Sheet No. 34.3

South Georgia states that the proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment (PGA) clause of South Georgia's tariff as agreed at the technical conference held on August 10, 1988 in Docket No. RP88-163.

Copies of the filing were served upon the Company's jurisdictional customers, interested parties 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 the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before Sept. 6, 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. 88-20039 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-180-002]

Trunkline Gas Co.; Compliance Filing

August 30, 1988.

Take notice that Trunkline Gas Company (Trunkline) on August 24, 1988, tendered for filing certain revised tariff sheets. The proposed effective date of these revised tariff sheets is December 1, 1988.

Trunkline states that on May 31, 1988, it filed a general rate application with the Federal Energy Regulatory Commission (Commission) in Docket No. RP88-180-000. On June 30, 1988 the Commission issued an Order "Accepting and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedures (Order)." Ordering Paragraph (G) of that Order permits Trunkline's firm sales and firm transportation customers, if they choose, to submit D-2 nominations to Trunkline.

Trunkline states that the Order imposed a D-2 nomination process in part because the same had been required in connection with other pipeline rate filings. However, that Order failed to include reference to overrrun charge provisions for use of the system in excess of D-2 nomination, as had been imposed in other cases in which this process has been implemented. Trunkline's existing tariff has no provision for use of the system by customers above the level of D-2 nominations. The Commission has found that such overrun charge provisions are necessary in order to provide an incentive to prevent undernominations by customers. Without such provisions, uncontrolled and inappropriate cost-shifting may eventuate. Trunkline states that in order to correct this deficiency the revised tariff sheets include the D-2 overrun tariff provisions form firm sales and firm transportaion customers made necessary as a result of the imposition of a D-2 nomination process pursuant to the Order issued in Docket No. RP88-180-000.

Trunkline further states that in order to provide its firm sales and firm transportation customers time to consider the effect of these tariff provisions on their nominations under the suspension order in Docket No. RP88-180-000, Trunkline respectfully requests a thirty (30) days extension of time for its customers to submit their D-2 nominations and for Trunkline to file to reflect these new D-2 nominations in the rates filed in Docket No. RP88-180-000.

Trunkline states that copies of its filing have been served on all parties, jurisdictional customers and appropriate 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 6, 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. 88-20040 Filed 9-1-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3437-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 15, 1988 through August 19, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5074. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the Federal Register dated April 22, 1988 (53 FR 13318).

DRAFT EISs

ERP No. D-NPS-L61096-AK, Rating LO, Cape Krusenstern National Monument, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY:** EPA has no objections to the proposed action.

ERP No. D-NPS-L61176-AK, Rating LO, Glacier Bay National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described.

ERP No. D-NPS-L61177-AK, Rating LO, Aniakchak National Monument and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action.

ERP No. D-NPS-L61178-AK, Rating LO, Kobuk Valley National Park, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described in this document.

ERP No. D-NPS-L61179-AK, Rating LO, Katmai National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described in this document.

ERP No. D-NPS-L61180-AK, Rating LO, Denali National Park and Preserve, Wilderness Recommendations, Designation or Nondesignation, AK. **SUMMARY** EPA has no objections to the proposed action as described.

Final EISs

ERP No. FS-FHW-E40174-SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC. **SUMMARY** EPA has no objections to this project.

ERP No. FS-FHW-E40174-SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC. **SUMMARY** EPA has no objections to this project.

ERP No. F-FHW-L40152-WA, I-405 Construction, South Renton Interchange to Sunset Interchange, Funding and Section 10 Permit, City of Renton, King County, WA. **SUMMARY** EPA has no objections to the project.

ERP No. F-FHW-L51012-OR, Airport Way Widening and Extension, I-205 to I-84, Funding, Multnomah County, OR. **SUMMARY** EPA has no objections to the project as described in this document.

ERP No. F-FRC-L05046-WA, Rock Island Hydroelectric Project No. 943, Operating License Renewal, Columbia River, Chelan County, WA. **SUMMARY** Review of the final EIS has been completed and the project found to be satisfactory. No formal comments were sent to the agency.

Dated: August 30, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-20070 Filed 9-1-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3437-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5075.

Availability of Environmental Impact Statements Filed August 22, 1988 Through August 26, 1988 Pursuant to 409 CFR 1506.9.

EIS No. 880275, Draft, FHW, VA, George P. Colemen Bridge Traffic Congestion Alleviation, York River Crossing Study, Section 10 and 404 Permits, Coast Guard Permits and Funding, York and Glocester Counties, VA, Due: October 17, 1988, Contact: James M. Tumlin (804) 771-2371.

EIS No. 880276, Draft, BLM, AK, Fort Greely Maneuver Area and Air Drop Zone, Resource Management Plan for Nonmilitary Uses, AK, Due: December 1, 1988, Contact: Jim Ducker (907) 271-5595.

EIS No. 880277, Draft, BLM, AK, Fort Wainwright Maneuver Area, Resource Management Plan for Nonmilitary Uses, AK, Due: December 1, 1988, Contact: Jim Ducker (907) 271-5595.

EIS No. 880278, LDraft, SFW, AK, Alaska National Wildlife Refuges Native Owened Inholdings Acquisition in Exchange for Limited Oil and Gas Interest in the Coastal Plain of the Arctic National Wildlife Refuge, AK, Due: October 17, 1988, Contact: Ann Rappoport (907) 786-3399.

EIS No. 880279, Final, AFS, CA, Plumas National Forest Land and Resource Management Plan, Implementation, Plumas, Lassen, Butte, Sierra and Yuba Counties, CA, Due: October 3, 1988, Contact: Mary J. Coulomber (916) 283-2050.

EIS No. 880280, Final, MMS, MXG, AL, MS, TX, LA, 1989 Central and Western Planning Areas Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales No. 118 and 122, Lease Offerings offshore the coast of Alabama, Mississippi, Louisiana and Texas, Due: October 3, 1988, Contact: Jesse L. Hunt (504) 736-0557.

EIS No. 880281, Final, USA, MN, Camp Ripley Army National Guard Training Site, Mission Expansion and Multiple Construction, Implementation, Morrison County, MN, Due: October 3, 1988, Contact: Joh F. Ebert (612) 632-6631.

EIS No. 880282, Final, GSA, CA, Oakland Federal Building Construction, Approval, Alameda County, CA, Due: October 3, 1988, Contact: Ken Schreiber (415) 974-7624.

EIS No. 880283, Final, UAF, AZ, Sells Military Operations Area/Air Traffic Control Assigned Airspace, Supersonic Flight Operations Overlying Tohono O'Odham Indian Reservation and Organ Pipe Cactus National Monument, Continuation, Pima County, AZ, Due: October 3, 1988, Contact: Michael Reardon (804) 764-4430.

EIS No. 880284, Draft, DOE, AZ, CO, IL, MI, NC, TN, TX, Superconducting Super Collider Construction and Operation, Site Selection, Arizona, Colorado, Illinois, Michigan, North Carolina, Tennessee and Texas, Due: October 17, 1988, Contact: Dr. Wilmot Hess (301) 353-6570.

Dated: August 30, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-20071 Filed 9-1-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3440-1]

National Advisory Council for Environmental Technology Transfer; Open Meeting

Under Pub. L. 92463 (the Federal Advisory Committee Act), EPA gives notice of the first meeting of the National Advisory Council for Environmental Technology Transfer (NACETT) on September 22, 1988, at

9:00 a.m. at the Board Room of the American Institute of Architects, 1735 New York Avenue, NW., Washington, DC 20006.

The agenda for the first meeting of NACETT will include discussions on the following topics:

1. What is technology transfer in the context of business and industry, education and government and how does it differ from technology transfer in the process of achieving environmental goals?
2. What should EPA and involved communities do to assure that environmental educational and training programs will adequately transfer up-to-date management practices and technical expertise to current and future environmental managers?
3. What steps should be taken to promote public and private investment in the development and demonstration of new and better environmental technologies, steps that will both smooth and facilitate the evaluation of new technologies (e.g., easing permitting processes, providing better environmental data for better forecasting) and provide methods to support early investment?
4. What approaches to technology transfer will best extend environmental awareness and results internationally?

Members of the public wishing to make comments are invited to submit them in writing to R. Thomas Parker, Designated Federal Official for NACETT, by September 19, 1988. Please send comments to R. Thomas Parker (A-101 F6), EPA, 499 South Capitol Street, SW., Washington, DC 20460.

The meeting will be open to the public. Additional information on the meeting may be obtained from R. Thomas Parker by writing to the above address or by calling Mr. Parker at 475-9741.

Date: August 29, 1988.

Robert S. Cahill,

Associate Administrator for Regional Operations.

[FR Doc. 88-20003 Filed 9-1-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

August 25, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501 *et seq.*).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0004

Title: Sections 1.1307, 1.1308, and 1.1311—Environmental Information Collection Requirements.
Action: Revision.
Respondents: Individuals or households, state or local governments, businesses (including small businesses), and non-profit institutions.
Frequency of Response: On occasion.
Estimated Annual Burden: 1,154 Responses; 2,423 Hours, 2.1 hours each.
Needs and Uses: In fulfilling its obligation under the National Environmental Policy Act, the Commission collects environmental information from applicants whose proposals to construct or modify communications facilities may have a significant environmental impact.

OMB Number: None

Title: Sections 76.94, 76.155, 76.157, and 76.159—Syndicated Exclusivity and Network Non-duplication.
Action: New collection.
Respondents: Businesses.
Frequency of Response: On occasion.
Estimated Annual Burden: 864,675 Responses; 137,483 Hours, 10 minutes each.
Needs and Uses: Notifications by television stations and program suppliers will provide cable systems with information on programs for which they have syndicated exclusivity/network non-duplication rights. The data provided to cable systems by television stations will be used to determine when programs subject to deletion will be aired, so that cable systems can delete carriage of signal at appropriate time.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-19973 Filed 9-1-88; 8:45 am]

BILLING CODE 6712-01-M

Privacy Act of 1974; Notice of Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notices of systems of records; proposed new systems of records; altered systems of records; deletion of systems of records.

SUMMARY: This notice meets the requirement of the Privacy Act of 1974 regarding the publication of an agency's notice of systems of records. It documents minor administrative changes to FCC's inventory of systems of records, proposes major alterations to three existing systems, proposes to establish two new systems of records, proposes revision of a system by combining two existing systems and deleting one redundant system notice, and deletes those systems which no longer exist or which are not systems of records under the Privacy Act. Also, this document establishes certain blanket routine uses which may be made of the information in FCC's systems of records.

Proposals in this notice are written in the present, rather than the future tense, to avoid unnecessary expenditure of public funds to republish it, unless FCC receives comments which make republication necessary.

DATES: Written comments on the proposed changes should be received by October 3, 1988. All proposals shall be effective after this date, except for new/altered systems, unless FCC receives comments that would require a contrary determination. A longer comment and review period will be required for the two new systems of records described in **"SUPPLEMENTARY INFORMATION"** below. As required by 5 U.S.C. 552a(o) of the Privacy Act, FCC submitted reports of new and altered systems to the Congress and to the Office of Management and Budget (OMB) on August 29, 1988. The new systems of records, including routine uses, will become effective 60 days from publication unless FCC receives comments which would require a contrary determination. For the three altered systems proposed below, FCC is requesting a waiver from OMB of its 60-day advance review period. If OMB grants the waivers, the proposed altered systems will be effective 30 days from publication, unless FCC receives comments which would require a contrary determination.

ADDRESS: Comments should be mailed to Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Written comments will be available for inspection at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, Privacy Act Officer, Information Resources Branch, Room 416, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, (202) 632–7513.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the existence and character of the systems of records maintained by the FCC. This agency previously gave complete notice of its systems of records by publication in the **Federal Register** on December 30, 1981, 46 FR 63108. This notice is a summary of more detailed information which may be viewed at the location and hours given in the **"ADDRESS"** section above.

PREFATORY STATEMENT

Minor Corrections and Changes:

This document corrects minor typographical or editorial errors and reflects minor administrative changes such as to organization names, location of the records, and records disposition instructions which appeared in the last complete publication of FCC's system notices at 46 FR 63108, December 30, 1981. Existing routine uses for some systems have been editorially improved to clarify the purposes and compatible uses of the system. Where minor stylistic differences occur, routine uses have been made editorially uniform by making reference to the Blanket routine uses listed below. None of these typographical, editorial, or administrative changes alter the purposes for which the systems were created, nor do they meet other criteria which would require an Altered System report under the Privacy Act and OMB Circular No. A–130.

Revision of a System by Combining Two Existing Systems:

FCC is revising FCC/OMD–2 and deleting FCC/Central–3, in order to combine two existing systems of records into one composite notice. The composite notice, published in its entirety below, is titled "FCC/OMD–2, Labor and Employee Relations Case Files" and supersedes the previous notice "Employee Relations Case File" published in the **Federal Register** on December 30, 1981, 46 FR 63108. "FCC/Central–3, Grievance Records" which last appeared in the same December 30, 1981 system notice, is combined into the composite "FCC/OMD–2" notice published below. FCC/Central–3 is hereby deleted from the FCC inventory of Privacy Act system of records notices.

The combining of the record systems reflects a change in the actual manner in which the records were formerly maintained. The change does not alter the purposes of the system, nor does it create increased access to it.

Seven new compatible routine use disclosures are being applied to the Labor and Employee Relations Case Files. Also, six other compatible routine use disclosures formerly applicable to FCC/Central–3 are being applied to Labor and Employee Relations Case Files.

Altered Systems of Records:

Three systems of records are being substantially revised. As required by the Privacy Act and OMB Circular No. A–130, Altered System Reports for these systems were submitted on August 29, 1988 to the Office of Management and Budget, the President of the Senate, and the Speaker of the House for the following three systems. Because these altered systems are existing systems necessary for the conduct of internal security programs, regulatory enforcement activity, and committee management, we have requested the Office of Management and Budget to waive the 60-day advance review period for all three. All new and revised text for altered systems is printed *in italics* in each individual system notice below. The proposed modifications are as follows:

1. For FCC/Central–6, Personnel Investigation Records, the categories of records included in the system is expanded to include, in some instances, photographs of the subject individual.

2. For FCC/FOB–2, Violators File (on individual subjects of FCC field enforcement actions), a new intra-agency use is added which permits the forwarding of limited information via an automated database to the central computer facility and field facilities. This use is compatible with the original purpose of the records. Because this modification constitutes a change in computer configuration, the FCC is establishing safeguards to counteract the increased potential for unauthorized access to the system.

3. FCC/OMD–3, National Industry Advisory Committee Membership File, is renamed "Federal Advisory Committee Membership File" and the categories of individuals covered by the system are expanded to include members of all advisory committees sponsored or co-sponsored by FCC. The expansion is necessary for the FCC to properly administer the committees it sponsors pursuant to the Federal Advisory Committee Act. This change avoids the unnecessary duplication that would result from creating a separate system of records for each type of advisory committee. Also, new compatible routine uses are being established to permit disclosures that are permitted by the Federal Advisory Committee Act.

New Systems of Records:

Two new systems of records are included in this document: FCC/Central–8, Telephone Call Detail Records, is being established by the FCC to enable it to carry out a program to help it control the costs of operating its telephone system. The proposes for this collection of information are (1) to deter the use of the telephone system for unofficial purposes and (2) to recover for the agency the cost of unofficial calls.

FCC/OGC–7 is being established by the FCC Office of General Counsel to enable it to implement orders received from courts of competent jurisdiction or authorized government entities concerning garnishment or levy of wages payabled to FCC employees, as set forth in the system notice published below.

These systems will be effective 60 days from publication, unless comments received require a contrary determination.

Deletion of Existing Systems:

A total of eight FCC systems of records are being deleted, all of which last appeared in the **Federal Register** on December 30, 1981, 46 FR 63108.

Six systems are being deleted because they are not systems of records as defined by the Privacy Act, in that information in the six systems is not retrievable by name of individual: FCC/BCB–1, Broadcast Station Ownership File; FCC/CTB–1, Cable Operator Ownership File; FCC/CCB–2, Contracts for Personal Services; FCC/CCB–3, Employment Discrimination Complaints Against Common Carriers; FCC/OMD–1, Docket History Cards; and FCC/PRB–3, Current Projects File (Applications/Licensees that may not comply with rules).

One system FCC/PRB–1, Amateur and CB License Fees, Refunded and Uncollectable, is being deleted because it is no longer maintained and all records formerly in the system have been destroyed. Also, FCC is deleting FCC/Central–3, Grievance Records because the records have been incorporated into another system, FCC/OMD–2, as explained above.

Blanket Routine Uses:

The Commission is establishing general or "blanket" routine uses that

may be made of the information in its systems of records. The following blanket routine uses may be applied to, and incorporated by reference into, every record system maintained within the Commission. The extent of their application is indicated by a listing of the blanket routine use numbers in each individual system notice. These blanket routine uses are published in this manner in order to avoid unnecessary repetition and in the interest of simplicity and economy, rather than repeating them in each individual system of records notice:

1. ROUTINE USE—LAW ENFORCEMENT: Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, the relevant records may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation or for enforcing or implementing the statute, rule, regulation or order.

2. ROUTINE USE—DISCLOSURE WHEN REQUESTING INFORMATION: A record may be disclosed to request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. ROUTINE USE—DISCLOSURE OF REQUESTED INFORMATION TO A FEDERAL AGENCY: A record may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. ROUTINE USE—CONGRESSIONAL INQUIRIES: A record on an individual in a system of records may be disclosed to a congressional office in response to an inquiry the individual has made to the congressional office.

5. ROUTINE USE—DISCLOSURE TO THE GENERAL SERVICES ADMINISTRATION (GSA) AND THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA): A record from a system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. Sec. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. ROUTINE USE—DISCLOSURE TO A COURT OR ADMINISTRATIVE BODY: A record on an individual in a system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. ROUTINE USE—DISCLOSURE TO THE DEPARTMENT OF JUSTICE OR A COURT FOR LITIGATION: A record from a system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

8. ROUTINE USE—DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT (OPM): A record in a system of records which concerns information on pay and leave, benefits, retirement deductions, and any other pertinent information may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

For some systems of records, blanket routine uses are replacing existing routine uses which are identical except for minor stylistic differences. The compatible blanket routine uses are incorporated into FCC systems of records as specified in the following table:

System No.	System name	Blanket routine uses proposed (numbers)
FCC/Central-1	Pay, Leave and Travel Records.	1 through 8.
FCC/Central-4	Employee Activity Reporting System.	1 through 8.
FCC/Central-6	Personnel Investigation Files.	1, 4, 5, and 6.
FCC/Central-8	Telephone Call Detail Records.	1, 3, 4, 5, 6 and 7.
FCC/FOB-1	Radio Operator Records.	1 through 7.
FCC/FOB-2	Violators File (individuals . . .).	1 through 7.
FCC/PRB-4	Persons Operating Radio Equipment Improperly.	1 through 7.
FCC/OMD-4	Security Office Control Files.	1, 2, 4 and 5.
FCC/OMD-6	Records of Money Received, Refunded and Returned.	1 through 7.
FCC/OGC-4	Parties Involved in Current Litigation Before Federal Courts.	6 and 7.
FCC/OGC-5	Parties with Pending Civil Cases Before Any District Court that Affect the Commission.	6 and 7.
FCC/OGC-8	Garnishment and Levy of Wages.	1, 6 and 8.

H. Walker Feaster III,

Acting Secretary, Federal Communications Commission.

Table of Contents

Central Systems; Common to Several Bureaus/Offices or Which May Include All FCC Employees:

FCC/Central-1 Pay, Leave and Travel Records
FCC/Central-2 Employee Locator Card Files
FCC/Central-4 Employee Activity Reporting System
FCC/Central-5 Alcoholism and Drug Abuse Case Files
FCC/Central-6 Personnel Investigation Records
FCC/Central-7 Freedom of Information Act Case Files
FCC/Central-8 Telephone Call Detail Records

Common Carrier Bureau:

FCC/CCB-1 Complaints and Inquiries File
FCC/CCB-4 Public Land Mobile Individual Users File

Field Operations Bureau

FCC/FOB-1 Radio Operator Records
FCC/FOB-2 Violators File (on individuals who have been subjects of FCC field enforcement actions).

Private Radio Bureau:

FCC/PRB-2 Application and License File
FCC/PRB-4 Licensees or Unlicensed Persons Operating Radio Equipment Improperly
FCC/PRB-5 Application Review List for Present or Former Licensees, Operators or Unlicensed Persons Operating Radio Equipment Improperly.

Office of Engineering and Technology:

FCC/OET-1 Experimental Radio Station License File

Office of General Counsel:

FCC/OGC-1 Alleged Violators File (Ex Parte Rules)
FCC/OGC-2 Attorney Misconduct Files
FCC/OGC-3 Employee Complaint Adjudication
FCC/OGC-4 Parties Involved in Current Litigation Before Federal Courts
FCC/OGC-5 Parties with Pending Civil Cases Before Any District Court That Affect the Commission.

FCC/OCC–6 Private or Civil Injury Claimants
FCC/OGC–7 Garnishment and Levy of Wages

Office of Managing Director:

FCC/OMD–2 Labor and Employee Relations Case file
FCC/OMD–3 Federal Advisory Committee Membership File
FCC/OMD–4 Security Office Control Files
FCC/OMD–5 Emergency Communications Committee Membership File
FCC/OMD–6 Records of Money Received, Refunded, and Returned

FCC/Central–1

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Financial Management Division and administrative offices of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554, and FCC field offices. (See FCC telephone directory for field offices addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains various records required to administer the pay, leave, and travel requirements of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3102, 3309.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used:

a. To authorize payroll deductions for allotments, savings bonds, charitable contributions, union dues, health benefits and life insurance; collect indebtedness for overpayment of salary and unpaid Internal Revenue taxes; pay income tax obligation to Internal Revenue Service; authorize issuing of salary checks by Treasury Department; obtain reimbursement of travel expenses for official business report gross wages and separation information for unemployment compensation; pay any uncollected compensation due a deceased employee; and provide for a summary of employees payroll data and retirement contributions.

b. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

All of the blanket routine uses of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual files in folders, cards, magnetic tapes, and loose leaf binders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in filing cabinets in an office that is locked when not occupied by staff. Records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time from one year to permanently in accordance with General Records Schedules issued by the National Archives and Records Administration. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, 1919 M Street NW., Washington, DC 20554 or the appropriate administrative office in which the individual is employed.

NOTIFICATION PROCEDURE:

Same as above. It is necessary to furnish the following information in order to identify the individual whose records are requested:

A. Full name.
B. Date of Birth.
C. Social Security Number.
D. Mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

RECORD SOURCE CATEGORIES:

Information is provided by management officials and by the individuals on whom the record is maintained.

FCC/Central–2

SYSTEM NAME:

Employee Locator Card Files.

SYSTEM LOCATION:

Personnel and administrative offices of the Federal Communications Commission, 1919 M Street NW., 2025 M Street NW., and 2000 L Street NW., Washington, DC 20554, and FCC field offices. (See FCC telephone directory for field office addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Current employees of the Federal Communications Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location and telephone number of individual office employees. The system also contains the home address and telephone number of the employee and the name, address, and telephone number of an individual to contact in the event of a medical or other emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The record serves to identify an individual for office officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. These records may be used to locate individuals for personnel research.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3" x 5" paper.

RETRIEVABILITY:

Records are retrieved by name of individual employee.

SAFEGUARDS:

Records are maintained in secured areas and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained as long as the individual is an employee of the Commission. Expired records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate Personnel or administrative office in which the employee is employed.

NOTIFICATION PROCEDURE:

FCC employees wishing to inquire whether the system contains information about them should contact the appropriate FCC administrative officer where employed. Individuals must supply their full name in order for records to be located and identified.

RECORD ACCESS PROCEDURE:

Employees should contact the appropriate FCC adminstrative officer where employed.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

FCC/Central-4

SYSTEM NAME:

Employee Activity Reporting System.

SYSTEM LOCATION:

1919 M Street NW., 2025 M Street NW., 2000 L Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current FCC employees whose bureau or office is a participant in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual activity reporting forms containing a person's name, social security number (optional), organization code, activity code and number of hours spent working on the reported activity during a semimonthly reporting period. Monthly reporting forms listed total Bureau/Office output of selected production measures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 4 and 5 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Bureau and Office management personnel use data to measure time expended on various programs, services or activities and productivity at Divisional or Bureau level. Financial Management Division uses data to develop future budget estimates.

All of the blanket routine uses of the Prefatory Statement are applicable to this system:

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original forms are stored in file cabinets by reporting period and organizational unit. Data is also contained on magnetic tapes stored in computer room, also denoted by reporting period.

RETRIEVABILITY:

Forms and tapes are maintained by semimonthly or monthly reporting period to facilitate aggregation for monthly report. Data is only rarely retrieved for an individual; Normal retrieval is by organizational levels and program, service or activity codes. Forms will be filed in each participating bureau to facilitate location for correction purposes only.

SAFEGUARDS:

Records are maintained in file cabinets in offices that are locked at the end of each business day. Access to tapes is controlled by computer room personnel.

RETENTION AND DISPOSAL:

Original forms are retained for three months and then destroyed by shredding. These original input documents are maintained for three months in order to facilitate correction of error listings. Tapes are retained for up to two years.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street NW., 2025 M Street NW., or 2000 L Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquires to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individual Activity Reports of employees participating the system. Monthly output reports from Bureau/Office management personnel.

FCC/Central-5

SYSTEM NAME:

Alcoholism and Drug Abuse Case Files.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FCC employees who seek guidance and counseling through the agency Alcoholism and Drug Abuse Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal history as it relates to the employee's problem. Records on employees referred for counseling.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

FPM 792.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference material for the use of the Program Administrator and Counselors.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in locked metal cabinets in the Program Administrator's Office.

RETRIEVABILITY:

Records are filed and retrieved by name of employee.

SAFEGUARDS:

Records are maintained in an office that is locked when not occupied by the Program Administrator. They are maintained in strict confidence and are accorded the same security and accessibility restrictions provided for medical records.

RETENTION AND DISPOSAL:

Records are kept indefinitely or until the employee leaves the FCC, at which time they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Employee, employee's supervisor, and counselors.

FCC/Central-6

SYSTEM NAME:

Personnel Investigation Records.

SECURITY CLASSIFICATION:

None for the system; however items or records within the system may have national defense/foreign policy classifications up through secret.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Current and former FCC employees or applicants for employment in the Federal service.

b. Individuals considered for access to classified information or restricted areas and/or security determinations as contractors, experts, instructors, and consultants to Federal programs.

c. Individuals who are neither applicants nor employees of the Federal Government, but who are or were involved in Federal programs under a co-operative agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for violations against the law; reports of interviews with present and former supervisors, coworkers, associates, educators, etc.; reports about the qualifications of an individual for a specific position; reports of inquiries with law enforcement agencies, employers, educational institutions attended; reports of action after OPM or FBI Section 8(d) Full Field Investigation; Notices of Security Investigation; and other information developed from the above Certificates of Clearance *and in some instances a photograph of the subject.* Also contained is investigative information concerning allegations of misconduct by an FCC employee, miscellaneous complaints not covered by the FCC's formal or informal grievance procedure, and inquiries conducted under the President's Program to eliminate waste and fraud in Government.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR Part 5; 5 U.S.C. Sections 1303, 1304, and 3301, E.O. 10450 and 11222; FCC Rules and Regulations, 47 CFR 19.735–107.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to provide investigatory information for determinations concerning compliance with Federal regulations and for individual personnel determinations including suitability and fitness for Federal employment, access and security clearances, evaluations of qualification, loyalty to the U.S., and evaluations of qualifications and suitability for performance of contractual services for the U.S. Government; to document such determinations; to take action on or respond to a complaint or inquiry concerning an FCC employee or to counsel the employee; to otherwise comply with mandates and Executive orders.

The following disclosures of information from this system may be made outside the FCC:

a. To designated officers and employees of agencies, offices, and other establishments in the executive, legislative and judicial branches of the Federal Government, and the District of Columbia Government, when such agency, office or establishment conducts an investigation of the individual for the purpose of granting a security clearance, making a determination of qualifications, suitability, or loyalty to the United States Government, or access to classified information or restricted areas.

b. To respond to a request for discovery or for appearance of a witness, when relevant to the subject matter involved in a pending judicial or administrative proceeding.

Blanket routine uses No. 1, 4, 5 and 6 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by *name of the individual subject.*

SAFEGUARDS:

Records are maintained within a secure, access-controlled area, and stored in approved security containers. Access is limited to cleared Security Office personnel and to Commission officials on a "need to know" basis when required to take decisional action on the records.

RETENTION AND DISPOSAL:

Records are retained during employment; records are returned to investigating agencies after employment terminates. Those originated by the FCC are retained for 20 years from the date of the most recent investigative activity. Records are destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager indicated above in writing. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social security number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

RECORD ACCESS PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a (c)[3] and (d), regarding access to records. The section of this notice titled "Systems exempted from certain provisions of the Act," which appears below, indicates the kinds of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their records should contact the system manager indicated above, in writing. Individuals must furnish the following information for their records to be located and identified.

a. Full name.

b. Date of birth.

c. Social security number.

d. Signature.

e. Any available information regarding the type of records involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting access must also comply with FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555)

CONTESTING RECORD PROCEDURES:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment to records. The section of this notice titled "Systems exempted from certain provisions of the Act," which appears below indicates the kinds of material exempted and the reasons for exempting them from amendment. Individuals wishing to request amendment to their non-exempted records should contact the system manager indicated above, in

writing. Requests should be directed only to the system manager, whether the record sought is in the primary system or in a decentralized segment. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

c. Social security number.

d. Signature.

e. Any available information regarding the type of record involved.

f. The category of covered individuals under which the requester believes he or she fits.

Individuals requesting amendment must also comply with the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. Applications and other personnel and security forms furnished by the individual.

b. Investigative and other record material furnished by Federal agencies.

c. Notices of personnel actions furnished by Federal agencies.

d. By personnel investigation or written inquiry from sources such as employers, educational institutions, references, neighbors, associates, police departments, courts, credit bureaus, medical records, probation officials, prison officials, newspapers, magazines, periodicals, and other publications.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system may contain the following types of information:

a. Properly classified information, obtained from another Federal agency during the course of a personnel investigation, which pertains to national defense and foreign policy. The Privacy Act, at 5 U.S.C. 552a(k)(1), permits an agency to exempt such materials from certain provisions of the Act.

b. Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such material from certain provisions of the Act. Materials may be exempted to the extent that release of the material to the individual whom the information is about would:

1. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or,

2. Reveal the identity of a source, who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

The Federal Communications Commission has claimed these exemptions from the requirements of 5 U.S.C. 552a (c)(3) and (d). These requirements relate to providing an accounting of disclosures to the individual whom the records are about and access to and amendment of records.

FCC/Central-7

SYSTEM NAME:

Freedom of Information Act Case Files.

SYSTEM LOCATION:

1919 M Street, NW., 2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals or organizations requesting access to inspect and/or copy records of the Commission under provisions of the Freedom of Information Act (FOIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other individually identifying information about the requester and the records sought.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, Pub. L. 93–402 (5 U.S.C. 552).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are available to FOIA staff involved in correspondence and investigative processes, including appeals officials and members of the General Counsel. Disclosures of information from this system may be made outside the Commission as follows:

1. In the event the Commission deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act (FOIA), disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

2. Where the appropriate official of the Commission, pursuant to the Commission's FOIA Regulation determines that it is in the public interest to disclose a record which is otherwise exempt from mandatory disclosure, disclosure may be made from this system of records.

3. The Commission contracts with a private firm for the purpose of searching, duplicating, and distributing to the public the documents maintained by the Commission and available for inspection under the Act. The contractor is required to maintain Privacy Act safeguards on such records.

4. A record on an individual in this system may be disclosed to a congressional office in response to an inquiry the individual has made to the congressional office.

5. In the event of litigation where the defendant is (a) the Commission, or any employee of the Commission in his or her official capacity, (b) the United States where the Commission determines that the claim, if successful, is likely to directly affect Commission operations; or (c) any Commission employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Commission may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in case files (original or copy of incoming request and written response).

RETRIEVABILITY:

For the most part, records are indexed by name of individual requester.

SAFEGUARDS:

Records are maintained in file cabinets in the offices of FOIA Liaisons throughout the Commission with limited access.

RETENTION AND DISPOSAL:

Individual case files are maintained for 2 years after date of reply. Denied requests and appeals of denials may be retained for longer periods (up to 5 years after final action) in accordance with FOIA and FCC records control schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street, NW. or 2025 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the appropriate system manager.

RECORD ACCESS PROCEDURES:

Address requests to the appropriate system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals and organizations making requests under FOIA or from bureaus or offices of the Commission reporting on the handling of such requests for inclusion in the annual report to Congress.

FCC/Central–8

SYSTEM NAME:

Telephone Call Detailed Records.

SYSTEM LOCATION:

1919 M Street, NW., 2025 M Street, NW., 2000 L Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who make long distance calls and individuals who received telephone calls placed from or charged to agency telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of agency telephones to place long distance calls; records indicating assignment of telephone numbers to employees and location of telephones in the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4(i) of the Communications Act; 43 Compt. Gen. 163; 41 CFR 101–37.105–4; 5 CFR 735.205.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in this system may be disclosed (a) to FCC employees and officials of labor organizations representing FCC employees to determine their responsibility for telephone calls; (b) to Commission officers and staff responsible for certifying official long distance calls; (c) to the Financial Management Division for the purpose of obtaining reimbursements for unofficial calls and to maintain accounting of the funds received; (d) to Commission staff responsible for considering or taking disciplinary action against employees for unofficial use of agency telephones.

Information in this system may be disclosed outside the FCC as stated in Blanket Routine Uses Nos. 1, 3, 4, 5, 6 and 7 of the Prefatory Statement.

POLICIES AND PRACTICES FOR STORING, RETRIEVINGS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and on magnetic tape.

RETRIEVABILITY:

Records are retrieved by employee name or identification number, by name of recipient of telephone call, and by telephone number.

SAFEGUARDS:

Paper records are maintained in file cabinets in offices which are locked at the end of each business day. Information on magnetic tape is secured through controlled access and passwords restricted to administrative office personnel.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 12, National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Appropriate bureau or office chief in the Commission located at 1919 M Street, NW., 2025 M Street, NW., or 2000 L Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Inquiries regarding this system should be addressed to the system manager in the appropriate bureau or office.

RECORD ACCESS PROCEDURES:

Requests for access to a record should be directed to the system manager in the appropriate bureau or office.

CONTESTING RECORD PROCEDURES:

An individual desiring to amend a record shall direct such a request to the system manager in the appropriate bureau or office.

RECORD SOURCE CATEGORIES:

Telephone assignment records; call detail listings; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

FCC/CCB–1

SYSTEM NAME:

Complaints and Inquiries File.

SYSTEM LOCATION:

2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have made complaints or inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints and related supporting information, company replies to complaints, letters of inquiry and Commission letters regarding such complaints and inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 208 of the Communications Act; FCC Rules, 47 CFR 1.711 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Commission personnel to handle and process complaints and inquiries received from individuals and companies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file.

RETRIEVABILITY:

Records are retrieved by individual name.

SAFEGUARDS:

Stored in unlocked files which are secured in office after hours.

RETENTION AND DISPOSAL:

The records are retained in the Commission and then destroyed 2 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Common Carrier Bureau, 1919 M Street, NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complainants and subject carriers.

FCC/CCB–4

SYSTEM NAME:

Public Land Mobile Individual Users File.

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

To the extent that Public Land Mobile Service application/license files

occasionally contain records on individuals as defined by the Privacy Act, this system covers individual applicants and licensees for Public Land Mobile Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for airborne (air-to-ground) licenses; related forms and correspondence; a computerized list of licensees by name and call sign.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 307 of the Communications Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system is used by Mobile Services Division staff to grant, dismiss or revoke applications.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfiche, and computer printout.

RETRIEVABILITY:

Records are retrieved by licensee name or call sign.

SAFEGUARDS:

The records are maintained in rooms which are secured at the end of the business day.

RETENTION AND DISPOSAL:

License files for Public Land Mobile service are cut off when superceded or a major modification occurs, then transferred to the Federal Records Center and destroyed when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Common Carrier Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals making applications.

FCC/FOB–1

SYSTEM NAME:

Radio Operator Records.

SYSTEM LOCATION:

Primary: 1919 M Street, NW., Washington, D.C. 20554. Secondary: Various field facilities. (See FCC telephone directory for field office addresses, or locate local office in commercial telephone directory under "U.S. Government.")

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have applied for radio operator licenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for commercial radio operator licenses, examination papers, records of documents issued, correspondence, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Geneva Radio Regulations; 47 U.S.C. Section 303(l), (m) and 318.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use in connection with the administration of the Commission's radio operator program including examinations, applications, and determinations of license applicant qualifications. Limited file material concerning licensed radio operators is forwarded for inclusion in the agency's central computer facility.

If the records indicate a possible violation of law, they may be referred, as a routine use, to the General Counsel and to the appropriate agency charged with the responsibility of investigating or prosecuting such violation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfilm and magnetic tape.

RETRIEVABILITY:

All records are retrievable by applicant name.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the close of the business day. Information provided by applicants concerning their mental or physical health or disability is kept in confidence and afforded the same security and accessibility restrictions as provided for medical records.

RETENTION AND DISPOSAL:

Commercial applications are destroyed when 11 years old. Both General and Restricted Permit applications are retained for 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Field Operations Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Individuals making applications. FOB field employees engaged in radio operator application processing.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act because such parts contain investigatory material compiled solely for law enforcement purposes pursuant to Section (k)(2) of the Act.

FCC/FOB–2

SYSTEM NAME:

Violators File (records kept on individuals who have been subjects of FCC field enforcement actions).

SYSTEM LOCATION:

Primary: 1919 M Street, NW., Washington, D.C. 20554. Secondary: Various field facilities (See FCC telephone directory for field office addresses, or locate local office in commercial telephone directory under "U.S. Government.")

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals who have been subjects of FCC field enforcement actions (monitoring, inspection, investigation) for violations of radio law, FCC Rules and Regulations, or International Radio Treaties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inspection reports, complaints, monitoring reports, investigative cases, referral memos, correspondence, discrepancy notifications, warning notices and forfeiture actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. Sections 101, 102, 104, 301, 312, 315, 318, 386, 401, 404, 501, 502, 503.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For use in connection with the Commission's field enforcement programs to determine levels of compliance among radio users; to issue marine certificates of compliance; *to document Commission monitoring, inspections and investigations for enforcement purposes; to provide a basis for various administrative, civil, or criminal sanction actions taken against violators by FOB or other appropriate Commission bureaus or offices.*

Limited information elements are transferred to the Commission's central computer facility and to FOB field facilities to maintain a cross-reference which prevents duplication of enforcement actions, and to track the progress of enforcement cases.

If the records indicate a possible violation of law, they may be referred, as a routine use, to the appropriate agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing the applicable statutes or rules.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, *magnetic tape, and computer printout.*

RETRIEVABILITY:

All records are retrievable by name and FCC-issued call sign.

SAFEGUARDS:

Paper records are kept in file cabinets in offices that are secured at the close of the business day. *Access to information on computer is restricted by use of passwords and location of terminals in rooms which are designated non-public areas, and which are secured outside of business hours.*

RETENTION AND DISPOSAL:

All violation notices are maintained for a period of 4 years, then destroyed. (Classified material is destroyed by burning or shredding.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Field Operations Bureau, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Correspondence with the individual subject. Commission employees located in the Field Offices, District Offices and Monitoring Stations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4), (G), (H), and (I), and (f) of the Privacy Act and from 0.554—0.557 of FCC Rules because such parts are maintained as a protective service for individuals described in Section 3056 of Title 18, and because they are necessary for FCC employees to perform their duties, pursuant to sections (k)(1), (2) and (3) of the Act.

FCC/PRB-2

Application and License File.

SYSTEM LOCATION:

2025 M Street, NW., Washington, D.C. 20554, and Route 116, Gettysburg, PA 17325. Records consisting of extracts of selected information can also be inspected at FCC field offices. (See FCC telephone directory for field office addresses, or locate local ofice in commercial telephone directory under "U.S. Government."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Radio service applicants and licensees under Parts 80, 87, 90, 94, 95, and 97 of the Commission's Rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, licenses, and correspondence maintained by various radio categories: Aeronautical and Fixed Group, Aircraft Group, Alaskan Group, Amateur, Automobile Emergency, Aviation Auxiliary Group, Aviation Radio Navigation Land, Business Citizens Band, Civil Air Patrol, Coastal Group, Disaster, Fire, Forest Products, Forestry Conservation, General Mobile, Highway Maintenance, Industrial Radio Location, Interurban Passenger (Motor Carrier), Interurban Property (Motor Carrier), Local Government, Manufacturers, Marine Auxiliary Group, Marine Radar Land, Motion Picture, Operational Fixed Microwave, Personal Radio, Petroleum, Police, Power, Radio Amateur Civil Emergency Service (RACES), Radio Control, Railroad, Relay Press, Ship Group, Special Emergency, Special Industrial, State Guard, Taxicab, Telephone Maintenance, Urban Passenger (Motor Carrier), Urban Property (Motor Carrier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 310, 303 of the Communications Act of 1934, and amendments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to administer the Commission's program relating to radio categories listed above including licensing, enforcement, rulemaking, and other actions requiring record information; to evaluate unique systems; to provide a service of information for the general public. Selected informational elements are incorporated in the Commission's central computer facility to maintain a current inventory of licensees for those services which are computerized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file boxes or cabinets. Automated records are on microfiche or computer media.

RETRIEVABILITY:

Records can be retrieved alphabetically by name of applicant/licensee within each radio service. Automated records can be retrieved by means other than personal identifier, such as location or call sign.

SAFEGUARDS:

Records are freely available for public inspection. There are safeguards against alteration of computer records by unauthorized persons (passwords). Paper files are maintained in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are normally retained as long as the station remains licensed, although some bulky files may be divided and older material sent to the Federal Records Center, and maintained a minimum of 2 years and a maximum of 11 years after expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, DC 20554

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. In order to facilitate the location of a specific record, the name of the raido category under which the application was filed and the call sign of the license issued should be included with the request.

RECORD ACCESS PROCEDURE:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Original applications and supplemental material submitted by applicants; correspondence from complainants; inspection reports; application processors.

FCC/PRB-4

SYSTEM NAME:

Licensees or Unlicensed Persons Operating Radio Equipment Improperly.

SYSTEM LOCATION:

2025 M Street, NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Licensees operating under Parts 80, 87, 90, 94, 95, and 97 of the Rules in violation of the Commission's Rules or the Communications Act of 1934. Unlicensed perons operating radio equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enforcement case history cards; investigatory and hearing files with inspection reports, complaints, correspondence, pleadings, legal memoranda, investigative findings, forefeiture notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 47 U.S.C. 301, 303, 309(e), 312, 362, 364, 386, 507, and 510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by bureau employees in enforcement and hearing cases to document, to evaluate, and to impose sanctions for violations of the Rules or Act. Blanket Routine uses No. 1–7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders, card files.

RETRIEVABILITY:

Records are filed and retrieved by name of licensee or unlicensed individual.

SAFEGUARDS:

Records are maintained on a division level in appropriate file cabinets in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

The documentation portions of these records are retained for 3 years, after the case is closed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Information originates from various sources: FCC Field Engineers; private citizens; Department of Justice; other Commission personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act of 1974, 5 U.S.C. 552(a), and from §§ 0.554–0.557 of the Commission's Rules because such parts contain investigatory material compiled solely for law enforcement purposes pursuant to Section 552(k)(2) of the Act.

FCC/PRB-5

SYSTEM NAME:

Application Review List for Present or Former Licensees, Operators or Unlicensed Persons Operating Radio Equipment Improperly.

SYSTEM LOCATION:

2025 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or have been licensed under Parts 13, 80, 87, 95, or 97 of the Rules who have operated in violation of the Commission's Rules or the Communications Act. Unlicensed persons who have operated radio transmitting equipment. Persons who have had a license revoked or have had an application dismissed or denied, and are prohibited from filing another application within one year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, date of birth (if known) of individual, authorization code of staff member who placed name in the file, and the date the name was placed in the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 301, 303, 309(e), 312.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Needed by selected staff and filed employees to determine whether the applications of these individuals should be granted, dismissed or set for hearing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On magnetic tape and computer printout.

RETRIEVABILITY:

Information is filed alphabetically by name of individual in a computer and is retrieved periodically through computer printout.

SAFEGUARDS:

Access to computer is controlled by password in a secured office and the printouts are availably only to selected staff personnel.

RETENTION AND DISPOSAL:

The printouts are destroyed by machine shredding or by tearing into pieces when a new list is distributed. The computer tapes are retained for four back-cycles and on the fifth update, the oldest tape is destroyed. Individual names are removed from the file when retention is no longer appropriate; entire lists of names is reviewed quarterly.

SYSTEM MANAGER AND ADDRESS:

Chief, Private Radio Bureau, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Applicants and FCC Field Engineers.

FCC/OET-1

SYSTEM NAME:

Experimental Radio Station License Files.

SYSTEM LOCATION:

Room 7316, 2025 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who have been granted a license to operate an experimental radio

station under Part 5 of the Commission's Rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the application form (FCC Form 442, Application for a New or Modified Station) or renewal form (FCC Form 405, Application for Renewal of Station License) and supporting exhibits submitted by the applicant. May also include experimental project reports submitted by the applicant as required by FCC Rules, Part 5. File also includes comments from other Commission bureaus on interference potential of operation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Communications Act of 1934, as amended, Section 308. FCC Rules and Regulations, Part 5, Experimental Radio Services (other than Broadcast).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To make a determination of applicant's eligibility to operate a station in the experimental radio service; to determine interference potential to other radio services, as well as determine if project of experimentation is valid; to Federal agencies, other FCC bureaus, or to the public if it feels it may be impacted or wants to know what new experimentation is being conducted. FCC bureaus use the information to determine the interference potential as well as possible use in rulemakings. The information is available to anyone, unless the applicant has requested confidentiality under § 0.459 of the Commission's Rules or the information is classified.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Files are retrieved by licensee name. If more than one station per licensee, then also filed by call sign.

SAFEGUARDS:

All files are available to the public except classified files and files that have been granted confidentiality under § 0.457 of the Commission's Rules. Classified files are kept in locked cabinets in accordance with security regulations. Files that have been granted confidentiality under § 0.457 are marked "NOT FOR PUBLIC INSPECTION" and may only be accessed by Branch personnel and Commission employees who have a need to know the information.

RETENTION AND DISPOSAL:

Records are maintained in the office; destroyed 2 years after expiration of license.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Frequency Liaison Branch, Room 7322, 2025 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORDS ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

The majority of information comes from the individual. Other information comes from coordination with other FCC bureaus and from that which is generated within the Branch during the normal processing of the application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

FCC/OGC-1

SYSTEM NAME:

Alleged Violators File (Ex Parte Rules).

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals alleged to have violated the Commission's ex parte rules.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint letters, memoranda, briefs, Commission decisions recommending action and new releases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4(i) of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by staff attorneys to make a determination whether, in fact, a violation of the ex parte rules has occurred. The records may be referred to the appropriate agency charged with the responsibility of prosecuting such violation or enforcing the applicable statute or rule.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained by the name of the party accused of an ex parte violation.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day. Since only one or two office persons have need to routinely access this system, unauthorized examinations would be easily detected.

RETENTION AND DISPOSAL:

Destory when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Complaints, Security Officer, Bureau Chiefs.

FCC/OGC-2

SYSTEM NAME:

Attorney Misconduct Files.

SYSTEM LOCATION:

1919 M Street, NW., Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any attorney who appears in a representative capacity before the FCC and who is being charged with attorney misconduct.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, briefs, related Commission agenda items, ABA recommendations, investigative findings, complaints of attorney misconduct, memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 500(d)(2).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by staff attorneys to prosecute a case for attorney misconduct before the administrative law judge and the Commission. Record information may be referred, as a routine use, to the appropriate agency charged with the responsibility of enforcing any Commission penalties imposed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrived by the name of the attorney charged with misconduct.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the end of each business day. Since only one or two staff persons routinely access this record system, unauthorized examination during business hours would be easily detected.

RETENTION AND DISPOSAL:

Destroyed 5 years after case closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street, NW., Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Letters from pubic, pledgings, agenda items, intra-agency memoranda.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from Subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of the Privacy Act of 1974, 5 U.S.C. 552a, and from § 0.554–0.557 of the Commission's Rules because it is maintained for law enforcement purposes pursuant to subsection (k)(2) of the Act.

FCC/OGC–3

SYSTEM NAME:

Employee Complaint Adjudication.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission employee who is the subject of a complaint investigation involving internal personnel actions or activities, i.e., discrimination, grievance, political activity, separation or adverse action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system involve internal personnel disputes that have reached the hearing stage, and may include correspondence, memoranda, transcripts of hearings, briefs, investigative reports, decisions of hearing examiners and Commissioners.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S. Code Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by staff attorneys in the General Counsel's office in pre-hearing settlement negotiations with opposing parties; records are also used in preparation for the actual hearing before an administrative body or a court.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the subject individual in the investigation.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day.

RETENTION AND DISPOSAL:

Destroyed 5 years after case closure.

SYSTEMS MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Co-workers, other supervisors, classification experts, other persons involved in the case.

FCC/OGC–4

SYSTEM NAME:

Parties Involved in Current Litigation Before Federal Courts.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is a captioned party of record in an appeal from or petition for review of a Commission action, or other court filing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation Division docket files (duplicate files of those filed with the Court and other parties).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by Commission attorneys for case preparation and reference.

Blanket routine uses No. 6 and 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Indexed by case name.

SAFEGUARDS:

Records are filed in the Litigation office and secured after working hours.

RETENTION AND DISPOSAL:

After cases have been decided or dismissed and reach the inactive mode, the precedent-setting or important cases are reviewed to delete duplicative or unnecessary material and then are forwarded to the Library for binding. The cases remain in the Library for reference and research purposes. The remainder of the case records are destroyed when no longer needed or three years after closure, whichever occurs first.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

U.S. Circuit Court of Appeals and parties to proceedings.

FCC/OGC-5

SYSTEM NAME:

Parties with Pending Civil Cases Before Any District Court That Affect the Commission.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who has a miscellaneous case before any District Court that involves the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, briefs, bankruptcy papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Communications Act of 1934, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Record information is used by Commission attorneys to update information or furnish additional data for the Government agency handling the case.

Blanket routine uses Nos. 6 and 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual filing the claim.

SAFEGUARDS:

Records are maintained in unlocked file cabinets in an office that is secured at the end of each business day.

RETENTION AND DISPOSAL:

The records are destroyed when no longer needed or after five years, whichever occurs first.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Justice Department; U.S. Attorneys; other Federal agencies; U.S. District Courts; and parties to the proceedings.

FCC/OGC-6

SYSTEM NAME:

Private or Civil Injury Claimants.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who files a damage claim against the Commission or commits a tort against a Commission employee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Accident reports, tort claim vouchers, correspondence, memoranda, medical and payment receipts, repair and payment receipts, pictures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. Section 2672.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Record information is used by attorneys in the Office of General Counsel to determine whether a damage claim filed against the Commission should be paid and for reference when assigned a similar case. If it is determined that the claim should not be paid or in cases when, pursuant to the limitations set out in 28 U.S.C. Section 2672, the Commission cannot make the final determination whether or not to pay a claim, the record is routinely transferred to the appropriate agency charged with the responsibility of disposition.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by the name of the individual who filed the claim.

SAFEGUARDS:

Records are kept in an unlocked file cabinet in an office that is locked at the end of each business day. Since only one or two office persons routinely access this system, unauthorized examination during business hours would be easily detected.

RETENTION AND DISPOSAL:

Destroy 5 years after case closure.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Witnesses; General Counsel; Office of Managing Director; claimants; and employees.

FCC/OGC-7

SYSTEM NAME:

Garnishment and Levy of Wages.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any Commission employee who is the subject of a garnishment or levy order issued by a court of competent jurisdiction or by another government entity duly authorized to issue such order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Garnishment or levy orders served upon the agency for implementation, correspondence, memoranda.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used by staff attorneys in the General Counsel's office in directing the agency's implementation of garnishment and levy orders. Also, blanket routine uses number 1, 6 and 8 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

File folders.

RETRIEVABILITY:

Records are maintained by the name of the individual subject to garnishment or levy order.

SAFEGUARDS:

Records are kept in file cabinets in offices that are secured at the end of each business day. Because only one or two office persons have need to routinely access this system, unauthorized examinations would be easily detected.

RETENTION AND DISPOSAL:

Records are normally retained as long as the Commission remains under the obligation to implement the particular garnishment or levy order.

SYSTEM MANAGER(S) AND ADDRESSES:

General Counsel, Office of General Counsel, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Bankruptcy courts, state domestic relations courts, state public health and welfare departments or agencies, Internal Revenue Service, intra-agency memoranda.

FCC/OMD-2

SYSTEM NAME:

Labor and Employee Relations Case Files.

SYSTEM LOCATION:

Labor-Management and Employee Relations Branch, Office Of Associate Managing Director—Human Resources Management, Office of Managing Director, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a variety of records relating to formal and informal actions based on conduct or performance; grievances filed under the negotiated or administrative grievance procedures; requests for reconsideration; arbitrations; appeals; and miscellaneous inquiries and complaints. The records may include information such as case number; employee name, social security number, grade, job title, and employment history. The records may also include copies of notices of proposed actions; materials relied on by the agency to support the proposed action; statements of witnesses; employee responses or appeals; transcripts; and agency decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapters 33, 35, 43, 61, 63, 71, 73, 75, and 77; 5 CFR Parts 315, 359, 432, 531, 532, 610, 530, 715, 733, 735, 752, and 771.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

These records and information in these records may be used:

a. To provide information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation or civil or criminal law or regulation.

c. To disclose information to any source from which additional information is requested in the course of processing any of the covered actions or in regard to any appeal or administrative review procedure, to the extent necessary to identify the individual, inform the source or the purpose(s) of the request, and to indentify the type of information requested.

d. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, or the classifying of jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

f. To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

g. By the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C Section 2904 and 2906.

H. By the agency maintaining the records or the Office of Personnel Management to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual indentifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

J. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as promulgated in 5 U.S.C Section 1205 and 1206, or as may be authorized by law.

k. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with applicable laws and regulations, or other functions vested in the Commission by applicable law.

l. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

m. To provide officials of other Federal agencies information they need to know in the performance of their official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved preliminarily by case number. An examination of case logs will disclose the name of an employee associated with a case number.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

a. Records pertaining to the following matters are disposed of at the end of the first fiscal year following completion of the fiscal year in which the action was taken: Informal actions based on conduct or performance; oral admonishments confirmed in writing; and written reprimands.

b. Records pertaining to the following matters are disposed of at the end of the third fiscal year following completion of the fiscal year in which the action was taken: Grievances processed under the negotiated or administrative grievance procedures; and appeals.

c. Records pertaining to the following matters are disposed of at the end of the fourth fiscal year following completion of the fiscal year in which the action was taken: Within-grade increase denials/postponements; suspensions, removals, and furloughs taken under authority of 5 U.S.C. Chapters 35 and 75; and requests for reconsideration/review.

d. Records pertaining to the following matters are disposed of at the end of the fifth fiscal year following completion of the fiscal year in which the action was taken: Removals, demotions, and reassignments based on unacceptable performance; and arbitrations.

SYSTEM MANAGER(S):

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals subject to an action governed by this system of records will be provided access to the record upon request, subject to applicable law and regulation. Individuals should contact the System Manager for access. They must furnish the following information in writing for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate opening and closing date of the case and the kind of action involved.

d. Organizational component involved.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records to correct factual errors should contact the System Manager in writing. The following information must be provided:

a. Name.

b. Date of birth.

c. Approximate opening and closing date of the case and the kind of action involved.

d. Organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. Supervisors and managers.

d. Union officials.

e. Arbitrators and other third-parties, such as the Department of Labor, Federal Labor Relations Authority, and Merit Systems Protection Board.

FCC/OMD-3

SYSTEM NAME:

Federal Advisory Committee Membership File.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of *Federal advisory committees sponsored or co-sponsored by FCC.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–463, Federal Advisory Committee Act

CATEGORIES OF RECORDS IN THE SYSTEM:

Information showing individual name, business address, business telephone number, and occupation or title.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To distribute information to members of *each* committee, convene meetings, and conduct general committee business; *(2) to provide information to the public upon request; (3) to furnish information to the General Services Administration for use in compiling an annual report.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are grouped by name of committee and filed and retrieved thereunder by name of committee member.

SAFEGUARDS:

Paper records are maintained in file cabinets in offices which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are retained until the Committee is terminated, and then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. Name of advisory committee should be included in the inquiry.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURES:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Committee members.

FCC/OMD-4

SYSTEM NAME:

Security Office Control Files.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of cards, filed alphabetically, containing date of birth, place of birth, Social Security Number, classification as to position sensitivity, types and dates of investigations, investigative reports, dates and levels of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 10450 and 12065.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by FCC Security Officers and employees of the Security Office for administrative reference in connection with controlling position sensitivity and personnel clearances.

The following disclosures of information from this system may be made outside of the FCC:

1. To a Federal agency or the District of Columbia Government, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

2. To the security office of an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request for verification of security clearance, to FCC employees to have access to classified data or areas where their official duties require such access.

Blanket routine uses No. 1, 2, 4 and 5 in the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVINGS, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are retrieved by the name and date of birth of the idividuals on whom they are maintained.

SAFEGUARDS:

The cards are stored within a secured area. The cards do not leave the security office.

RETENTION AND DISPOSAL:

Cards are retained for twenty years after the individual leaves the agency and then are disposed of by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the appropriate system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Date of birth.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to records about them should contact the appropriate system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting access must also follow FCC Privacy Act regulations regarding verification of identity and access to records (47 CFR 0.554 and 0.555).

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the appropriate system manager indicated above. Individuals must furnish the following information for their record to be located and identified:

a. Full name.

b. Date of birth.

An individual requesting amendment must also follow the FCC Privacy Act regulations regarding verification of identity and amendment of records (47 CFR 0.556 and 0.557).

RECORD SOURCE CATEGORIES:

a. The individual to whom the information applies.

b. Investigative files maintained by the OPM Division of Personnel Investigations.

c. Employment information maintained by the Personnel officer.

FCC/OMD-5

SYSTEM NAME:

State and Operational Areas Emergency Communications Committee Membership.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chairmen and Vice Chairmen of State and Operational Area Emergency Communications Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information showing individual name, business address, business telephone number and title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–463, Federal Advisory Committee act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used to forward appropriate information to State Committee members, each broadcast station in the State and to Federal, State and local government officials for Emergency Communications planning.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are filed by state and by name of committee member within the state.

SAFEGUARDS:

Records are maintained in file cabinets which are locked at the end of each business day.

RETENTION AND DISPOSAL:

Records are retained indefinitely while the individual is a member of the committee; when member resigns, individual file material is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURES:

Address inquiries to the system manager. Name of state must be provided with any request for information.

RECORD ACCESS PROCEDURES:

Same as notification procedure.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Committee member.

FCC/OMD-6

SYSTEM NAME:

Records of money received, refunded, and returned.

SYSTEM LOCATION:

1919 M Street NW., Washington, DC 20554; Route 116, Gettysburg, PA 17326 and Room 207, Post Office Building, Gettysburg, PA 17325.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and companies making payments to cover goods acquired, forfeitures assessed, fees collected and services rendered; refunds for incorrect payments or overpayments; billing and collection of bad checks; and miscellaneous monies received by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and addresses of individuals or companies, records of goods acquired or services rendered; forfeitures assessed and collected; amounts; dates; check numbers; locations; bank deposit information; transaction type information; United States Treasury deposit numbers; ship name and call sign; and information substantiating fees collected, refunds issued, and interest penalties assessed individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1921; Budget and Accounting Precedures Act of 1950; Consolidated Omnibus Budget Reconciliation Act of 1985 and 31 U.S.C. 525.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to account for all monies received by the Commission from the public and refunded to the public; (b) to compute vouchers to determine amounts claimed and reimbursed.

Disclosure outside the Commission may be made to Federal, State or local Government agencies performing a tax, investigative or regulatory function.

Blanket Routine Uses No. 1 thru 7 of the Prefatory Statement are applicable to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, computer printout, microfilm, microfiche, magnetic disc, and magnetic tape.

RETRIEVABILITY:

By name and/or type of transaction; call sign; processing number, employer identification number, soundex number, fee control number, payment ID number or sequential number.

SAFEGUARDS:

Records are located in lockable metal file cabinets, metal vaults, and in metal file cabinets in secured rooms or secured premises, with access limited to those individuals whose official duties require access.

RETENTION AND DISPOSAL:

Retained for one year following the end of the fiscal year; then transferred to the Federal Records Center and destroyed when 6 years and 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, 1919 M Street NW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

Address requests to the system manager.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Subject individual and/or company; Federal Reserve Bank; agent of subject or company; or Attorney-At-Law.

[FR Doc. 88-19976 Filed 9-1-88; 8:45 am]
BILLING CODE 6712-01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 26, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. Annual Report on Home and Community Based Waivers—0938-0272—States with an approved waiver are required to submit the HCFA-372 annually in order to determine the waivers impact on the type, amount and cost of service provided under the state plan. Respondents: State or local governments; Number of Respondents: 46; Frequency of Response: Annually; Estimated Annual Burden: 9,556 hours.

OMB Officer: Allison Herron.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Report to Congress on Voluntary Placement Assistance—0980-0166—Section 102 (e) of Pub. L. 96-272 requires that the Secretary, Department of Health and Human Services shall submit to the Congress a report on the number of children in foster care pursuant to voluntary placement agreement and on the reasons for such placement. Respondents: State or local governments; Number of Respondents: 26; Frequency of Response: 1; Estimated Annual Burden: 520 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. *Cancer Prevention (Smoking) in Black Populations: Multiple Community Based Intervention—New*—Both in-person and telephone surveys will be used to assess the effectiveness of a community based Smoking intervention in three district geographic locations. The data will help guide NCI's National Cancer Prevention and Control program and provide needed information to assess an educational intervention in the black population which is disproportionately effected by cancers related to smoking. Respondents: Individuals or households; Number of Respondents: 6,634; Frequency of Response: Single-time study; Estimated Annual Burden: 2,393 hours.

2. Regulation—45 CFR 96—Preventive Health and Health Block Grant—0920-0106—The purpose of this data collection is to collect annual applications and reports on use of funds from 61 State grantees for the Preventive

Health and Health Service Block Grants. Respondents: State or local governments; Number of Respondents: 61; Frequency of Response: Annually; Estimated Annual Burden: 7,320 hours.

3. PHS Supplements to Application for Federal Assistance (SF-424)—Project Approval Checklists (Part II) and Project Narrative (Part IV)—New—Federal Grants Parts II and IV are part of application forms used to elicit information primarily from governmental and other nonprofit organizations requesting financial assistance from various PHS health grant programs. Respondents: State of local governments, Business or other for-profit, Non-profit institutions; Number of Respondents: 3,000; Frequency of Response: 1; Estimated Annual Burden: 6,750 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202-245-2100
HCFA: 301-966-2088
FSA: 202-245-0652
SSA: 301-965-4149
OS: 202-245-6511
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. *Attn:* Shannah Koss-McCallum.

Date: August 26, 1988.

James V. Oberthaler,

Deputy Assistant Secretary, Information Resources Management.

[FR Doc. 88-20000 Filed 9-1-88; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration

[Docket No. 87P-0339/CP]

Petition Requesting 5 Years Exclusivity for Haloperidol Decanoate Instead of the 3 Years Exclusivity Granted

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the filing of a citizen petition from McNeil Pharmaceutical, Spring House, PA 19477-0776, requesting that the agency grant 5 years marketing exclusivity for haloperidol decanoate, instead of the 3 years exclusivity granted when the new drug application (NDA) for this product was approved on January 14, 1986. FDA is giving notice of filing of the petition to all interested persons because a decision to grant the petition, if it is made, would affect the date when applications for marketing generic versions of haloperidol decanoate could be submitted.

DATE: Comments by October 3, 1988.

ADDRESS: Requests for a copy of the petition and written comments should be made to the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act authorizing FDA to accept abbreviated new drug applications (ANDA's) for generic versions of many previously approved new drug products. The new legislation also provides for periods of exclusive marketing for certain new drug products approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)). An ANDA or an NDA for a generic version of a drug product granted such exclusivity may not be submitted or its approval made effective until the period of exclusive marketing ends.

New drug products that have been granted exclusivity under any of the exclusivity provisions of the new legislation are set forth in a publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" (the list) and its supplements. The period of exclusivity for such products is included in the information in the list.

Persons may disagree with the agency's findings in granting a period of exclusivity to a drug product. A person may file a citizen petition with the agency seeking a change in the exclusivity status of an approved drug product. The agency's past practice has been to publish a notice in the **Federal Register** announcing the submission of a citizen petition after such a petition has been filed. Such notices state that copies of that petition are available on request. Such an announcement is constructive notice to all persons that they may be affected by that petition, and that they have an opportunity to submit their comments to the agency. Persons potentially affected include, among others, holders of approved ANDA's or NDA's described in section 505(b)(2) of the act, the effective dates of which application might be affected by a decision to grant such a petition; persons who have such applications pending or who contemplate submitting such applications; and persons whose rights to submit such applications may be affected.

On October 30, 1981, McNeil Pharmaceutical submitted an NDA for the drug haloperidol decanoate. The agency determined that a 3-year marketing exclusivity for haloperidol decanoate was appropriate pursuant to section 505(c)(3)(D)(iii) and (j)(4)(D)(iii) of the act, granted that period of exclusivity in approving NDA 18-701 for that drug product on January 14, 1986, and announced that determination in cumulative supplement 15 to the sixth edition of the list. The 3-year period of exclusivity for haloperidol decanoate is shown in the current edition of the list. The 3-year exclusivity period ends January 14, 1989.

On October 2, 1987, McNeil Pharmaceutical submitted a citizen petition (87P-0339/CP) challenging that determination and requesting that a 5-year period of exclusivity be granted pursuant to section 505(c)(3)(D)(ii) and (j)(4)(D)(ii). The petitioner amended its application in response to comments made by Quad Pharmaceuticals, Inc., 6340 La Pas Trail, Indianapolis, IN 46268, and to FDA's decision on Abbott Laboratories' Depakene/Depakote petition (Docket No. 86P-0367/CP). The petitioner contends that the statute was incorrectly applied by the agency. In accordance with FDA's past practice, the agency hereby announces the submission of that petition. FDA is reviewing the merits of the petition, and by this notice, is giving anyone who may be affected by this petition an opportunity to comment.

Interested persons may, on or before October 3, 1988, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should

be sent to the Dockets Management Branch.

Dated: August 26, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-20032 Filed 9-1-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 26-27, 1988, in the Conference Room of the Lee Building at the Federation of American Societies for Experimental Biology (FASEB), 9650 Rockville Pike, Bethesda, Maryland 20814.

This meeting will be open to the public on October 26 from 1:00 p.m. to recess and from 8:30 a.m. to adjournment on October 27 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496-2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20048 Filed 9-1-88; 8:45 am]

BILLING CODE: 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1988, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 7, C Wing.

The entire meeting will be open to the public from 1 p.m. to adjournment October 26, 1988, and 9 a.m. to adjournment October 27, 1988, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20892, telephone number (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20049 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, October 26-27, 1988, at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, Bethesda, Maryland 20892.

The entire meeting, from 1:00 p.m. on October 26, to adjournment on October 27, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1990. Attendance by the public will be limited to the space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health.)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20050 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, October 25, 1988. The meeting will be held at the National Institutes of Health, Building 31, Conference Room 6, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20051 Filed 9-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting, National Kidney and Urologic Diseases Advisory Board

Pursuant to Pub. L 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on September 26–27, 1988, from 8 a.m. to approximately 5 p.m. each day at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Dr. Ralph Bain, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: August 29, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–20052 Filed 9–1–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–08–4322–02]

Boise District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Boise District Grazing Advisory Board Meeting.

SUMMARY: The Boise District Grazing Advisory Board will conduct a field tour September 27 in the Cedar Creek Area of the Jarbidge Resource Area, and will conduct a business meeting September 28 to discuss range improvement funding proposals for Fiscal Year 1989. A public comment period will be held at 2:00 p.m., September 28.

DATE: The field tour will depart the Boise District Office at 8:00 a.m., Tuesday, September 27. The business meeting will be conducted at Cactus Petes Motel in Jackpot, Nevada beginning at 8:00 a.m. on Wednesday, September 28.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District BLM, (208) 334–9303.

David B. Vail,

Acting District Manager.

Date: August 25, 1988.

[FR Doc. 88–19967 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–GG–M

[WY–060–88–4212–14; W–101835A, W–101835B]

Realty Action; Modified Competitive Sale of Public Lands; Sheridan County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands in Sheridan County.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719, at not less than fair market value. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law. This disposal is consistent with the Buffalo Resource Area's Resource Management Plan.

PARCELS

County	Serial No.	Legal description	Acreage	Appraised value
Sheridan	WYW–101835A	T. 55 N., R. 85 W., 6th P.M. Section 13: NE¼SW¼	40	$4,000
Sheridan	WYW–101835B	T. 55 N., R. 86 W., 6th P.M. Section 23: SE¼NE¼	40	$4,000

FOR FURTHER INFORMATION CONTACT: Glen Bessinger, Area Manager, Bureau of Land Management, Buffalo Resource Area, 189 North Cedar, Buffalo, Wyoming 82834, (307) 684–5586.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposed to sell all surface estates on both parcels and the mineral estate, excepting oil and gas on parcel WYW–101835B, pursuant to sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. 1713 and 1719. The mineral estate on parcel WYW–101835A is owned by the State of Wyoming.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws, upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of the publication, whichever comes first.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. For parcel WYW–101835B, a reservation of oil and gas to the United States.

3. For parcel WYW–101835B, oil and gas lease BLM serial number W–84302.

Sale and Bidding Procedures

The sale will be conducted by modified competitive bidding, and each parcel will be offered by a sealed bid process to the adjoining landowners. The apparent high bidder will be required to submit evidence of adjoining landownership before the high bid can be accepted.

All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the state of Wyoming, a state, state instrumentally or political; subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in Wyoming.

Sealed bidding is the only acceptable method of bidding. All bids must be received in the Buffalo Resource Area Office by October 22, 1988, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words "Public Land Sale, Serial Number _____

All sealed bids must be accompanied by a payment of not less than ten (10) percent of the total bid. Each bid and any final payment must be accompanied by certified check, money order, bank draft, or cashier's check made payable to: DEPARTMENT OF THE INTERIOR–BLM

For parcel WYW–101835B, a bid will also constitute an application for conveyance of those mineral interests being offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the purchaser will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next high bid will be honored or the land will be reoffered under competitive procedures. If two (2) or more envelopes containing valid bids of the sale amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

If any parcels fail to sell, they will be reoffered for sale under competitive bidding procedures. For reoffered land, bids must be received in the Buffalo Resource Area Office by 4:30 p.m. on the fourth (4th) Wednesday of each month beginning November 23, 1988. Reoffered land will remain available for sale until sold or until the sale action is cancelled or terminated. Reappraisals of the parcels will be made periodically to reflect the current market value. If the value of the parcel(s) change(s), it/they will be published and the land will remain open for competitive bidding according to the procedures and conditions of this Notice.

For a period of 45 days from the date of this Notice Published in the **Federal Register**, interested parties may submit comments to the District Manager, Casper District Office, 1701 East "E" Street, Casper Wyoming 82601. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become final.

Dated: August 26, 1988.

James W. Monroe,

District Manager.

[FR Doc. 88–19968 Filed 9–1–88; 8:45 am]

BILLING CODE 4310-22-M

[CO-940-08-4220-10; COC-48697]

Hearing on Withdrawal; Snowmass Ski Area, CO

August 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on the proposed Forest Service withdrawal application for the protection of recreational and resource values near Snowmass Village, Colorado. This hearing will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on October 19, 1988, at 7:00 p.m. All comments or requests to be heard should be made by close of business on October 7, 1988, to the Colorado State Office, Bureau of Land Management.

ADDRESS: Town of Snowmass Village Conference Room, 16 Kearns Road, Snowmass Village, Colorado 81615.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withrawal for the Snowmass Ski Area which was published on August 6, 1988 (53 FR 30873, 30874) is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.

This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, by October 7, 1988.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88–19983 Filed 9–1–88; 8:45 am]

BILLING CODE 4310-JB-M

[CO-940-08-4220-10; COC-48691]

Notice of Hearing on Withdrawal; Vail Ski Area CO

August 26, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and agenda for a forthcoming hearing on the proposed Forest Service withdrawal application for the protection of recreational and resource values near Vail, Colorado. This hearing will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

DATES: Hearing will be held on October 20, 1988, at 7:00 p.m. All comments or requests to be heard should be made by close of business on October 7, 1988, to the Colorado State Office, Bureau of Land Management.

ADDRESS: Vail Public Library, Community Room, 292 W. Meadow Drive, Vail, Colorado 81658 (parking available in Lions Head Parking Structure).

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, (303) 236–1768.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withrawal for the Vail Ski Area which was published on August 2, 1988 (53 FR 29090) is hereby modified to allow for public hearing as provided in 43 U.S.C. 1714 and 43 CFR Part 2310.

This hearing will be open to all interested persons; those who desire to be heard in person and those who desire to submit written statements on this subject. All comments and requests to be heard should be submitted to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, by October 7, 1988.

James D. Crisp,

Chief, Branch of Adjudication.

[FR Doc. 88–19985 Filed 9–1–88; 8:45 am]

BILLING CODE 4310-JB-M

[OR-943-08-4220-11: GP-08-239; OR-21729, OR-21580, OR-21320, OR-2900, ORE-016434-A, ORE-06518]

Proposed Continuation of Withdrawals; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service propses that all or portions of six separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the following identified land withdrawals be continued in whole or in part 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 following described lands and projects are involved:

Umatilla National Forest

1. OR–21729, Secretarial Order of March 27, 1908, Corporation R.S. #6, 40 acres, Located in Umatilla County, approximately 35 miles northeast of Pendleton,

T. 3 N., R. 37 E., W.M.,
Sec. 22.

2. OR–21580, Secretarial Order of January 23, 1907, Corporation R.S. #1, 31.12 acres, Located in Umatilla County, approximately 35 miles northeast of Pendleton,

T. 3 N., R. 37 E., W.M.,
Sec. 21.

Wallowa-Whitman National Forest

3. OR–21320, Secretarial Order of October 23, 1907, Billy Meadows Guard Station, 7.80 acres, Located in Wallowa County, approximately 30 miles northeast of Enterprise,

T. 4 N., R. 46 E., W.M.,
Sec. 15.

Siskiyou National Forest

4. OR–2900, Public Land Order No. 4538 of November 20, 1986, Lower Rogue River Recreation Area Addition, 216 acres, Located in Curry County, approximately 15 miles of northeast of Gold Beach,

T. 35 S., R. 12 W., secs. 10, 11, 14 and 20; and
T. 36 S., R. 13 W.,
Sec. 2.

5. ORE–016434–A, Public Land Order No. 3897 of December 1, 1965.
Recreation Sites, 240 acres, Located in Curry County, approximately 15 miles northeast of Gold Beach,

T. 36 S., R. 13 W., W.M.,
Secs. 1, 2 and 3.

6. ORE–06518, Public Land Order No. 1844 of May 5, 1959, Rogue River Recreation Areas, 151.88 acres, Located in Curry County, approximately 20 miles northeast of Gold Beach,

T. 35 S., R. 11 W., W.M.,
Secs. 19 and 29.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their 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 withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: August 26, 1988.

[FR Doc. 88–19969 Filed 9–1–88; 8:45 am]
BILLING CODE 4310–33–M

[OR–943–08–4220–11; GP–08–237; ORE–03219]

Proposed Continuation of Withdrawal; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that an existing withdrawal continue for 20 years and requests that the lands remain closed to mining and be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by Public Land Order No. 2335 of April 17, 1961 continue 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 lands involved are located in the Rogue River National Forest and aggregate approximately 5,670 acres in T. 37 S., R. 3 E., Tps. 31, 36 and 37 S., R. 4 E., T. 37 S., R. 4 E., Tps. 35, 36 and 37 S., R. 5 E., and T. 35 S., R. 6 E., W.M., Jackson and Klamath Counties, Oregon.

The purpose of the withdrawal is to protect the Lake of the Woods, Recreation Creek, Four-mile Lake, Fish-Lake, Dead Indian Soda Springs and Huckleberry City Recreation Areas. The withdrawal currently segregates the land from operation of the public land laws generally, including the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the lands be opened to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their 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.

B. Lavelle Black,
Chief, Branch of Lands and Minerals Operations.

Dated: August 25, 1988.

[FR Doc. 88–19970 Filed 9–1–88; 8:45 am]
BILLING CODE 4310–33–M

[OR–943–08–4220–11; GP–08–236; ORE–013615]

Proposed Continuation of Withdrawal; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that an existing withdrawal continue in part for an additional 20 years and requests that the lands remain closed to mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by Public Land Order No. 3361 of April 7, 1964 continue in part 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 lands involved are located in the Siskiyou National Forest and aggregate approximately 429.5 acres in Tps. 33 S., Rs. 10 and 11 W., W.M., Curry County, Oregon.

The purpose of the withdrawal is to protect the Lower Rogue River Recreation Area Addition. The withdrawal currently segregates the land from the mining laws. The Forest Service requests no changes 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, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their 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.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: August 25, 1988.

[FR Doc. 88-19971 Filed 9-1-88; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Gettysburg National Military Park; Draft Boundary Study; Public Meeting and Comment Period

AGENCY: National Park Service; Gettysburg National Military Park.

ACTION: Release of Draft Boundary Study, Public Meeting and Comment Period.

SUMMARY: The National Park Service has developed a draft Boundary Study which identifies key battlefield areas not currently a part of the park, monuments and other important elements of the historic setting that require protection, and some areas no longer needed for park purposes. This draft document will be sent to all interested parties for their review and comment.

The public review period will begin on September 1, 1988 and will end September 30, 1988. The public is encouraged to comment on the draft during this period. A public meeting is scheduled to assist in this effort.

DATE: September 14, 1988, 7:00 p.m.

ADDRESS: Gettysburg Junior High School, Gettysburg, PA.

SUPPLEMENTARY INFORMATION: Public comments made during this phase of the planning process will be considered before a Final Boundary Study is approved. Comments should be addressed to:

John Earnst, Superintendent, Gettysburg NMP, Gettysburg, PA 17324, (717) 334-1124

or

Division of Park and Resource Planning, National Park Service, U.S. Customs House, 2nd and Chestnut Streets, Room 260, Philadelphia, PA 19106, attn: Jonathan Doherty

Dated: August 23, 1988.

Alec Gould,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 88-19995 Filed 9-1-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Colorado River Quality Improvement Program, Price-San Rafael Rivers Salinity Control Unit, Utah

AGENCY: Bureau of Reclamation, Interior; Soil Conservation Service, Agricultural.

ACTION: Notice of intent to prepare a joint draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Department of the Interior and the Department of Agriculture intend to prepare a joint Draft Environmental Impact Statement (DEIS) for the Price-San Rafael Rivers Unit of the Colorado River Water Quality Improvement Program. Reclamation will also integrate the DEIS with a planning report for the salinity control unit. The DEIS will address the environmental impacts of and the alternatives to reducing salt loading to the Colorado River through irrigation systems improvements.

FOR FURTHER INFORMATION CONTACT: The Bureau of Reclamation contact for this DEIS is Larry W. Fluharty, Chief, Planning Division, Bureau of Reclamation, Utah Projects Office, P.O. Box 1338, Provo, Utah 84603, telephone (801) 379-1155.

The Soil Conservation Service contact for this DEIS is Gary R. Gross, Assistant State Conservationist, Soil Conservation Service, Utah State Office, P.O. Box 11350, Salt Lake City, Utah 84147, telephone (801) 524-5054.

SUPPLEMENTARY INFORMATION: The Price-San Rafael Rivers Unit is located in east-central Utah, 120 miles southeast of Salt Lake City, encompassing Carbon and Emery Counties. The Price and San Rafael Rivers and their tributaries deliver approximately 425,000 tons of salt annually to the Colorado River. Of this amount approximately 60 percent is the result of deep percolation of irrigation water into salt-bearing ground formations. This salt causes economic problems for municipal, industrial, and agricultural water users downstream. The purpose of the Price-San Rafael Rivers Unit is to decrease this salt loading in a cost-efficient manner.

Numerous alternatives have been evaluated for the unit including irrigation systems improvements, using irrigation return flows for powerplant cooling, treatment or disposal of return flows, using return flows for other industrial purposes, selective withdrawal and treatment of disposal of return flows, retiring farmland, using fresh water for other beneficial purposes, and no Federal action. Of these alternatives, all but the Irrigation Systems Improvements and No Federal Action Alternatives were determined to be nonviable and have been eliminated from further consideration.

Prior to 1986 the Bureau of Reclamation and the Soil Conservation Service were independently investigating methods of reducing salt loading within the study area. However, in March 1986, it was determined that greater effectiveness and economic efficiency could be achieved by both agencies jointly developing a salinity control project.

The Irrigation System Improvement Alternative would reduce deep percolation of irrigation water through development of more efficient irrigation systems. Under this alternative, pressurized sprinkler irrigation systems would be developed to serve approximately 26,000 acres of presently irrigated farmland. Additionally, surface irrigation improvements would be developed for 10,000 acres of existing farmland. Canal seepage due to winter water practices could be eliminated by providing winter water for livestock through existing culinary systems,

enlarging and lining existing stockponds in remote areas, making improvements to the existing Cottonwood Creek livestock watering system to improve its reliability, and constructing a pipeline to deliver raw water to the Orangeville and Castledale water treatment plants. Implementation of these measures would reduce salt loading by about 100,000 tons per year.

Measures to replace lost wildlife habitat caused by off-farm developments would be provided by Reclamation by development of new habitat in the vicinity of Three Forks on the San Rafael River. Measures to replace lost wildlife habitat onfarm would be provided voluntarily by individual farmers in accordance with the Colorado River Salinity Control Act of 1974 (Pub. L. 93–320) and as amended (Pub. L. 98–569) in 1984.

The Bureau of Reclamation and the Soil Conservation Service have each conducted their own separate scoping activities for the DEIS. No further formal scoping activities are planned.

The DEIS is scheduled to be circulated for public review during the summer of 1989.

Date: August 5, 1988.

Joe D. Hall,

Deputy Commissioner of Reclamation.

Date: August 1, 1988.

Norman W. Priest,

Deputy State Conservationist, Soil Conservation Service.

[FR Doc. 88–19981 Filed 9–1–88; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–183 (Sub-No. 1)]

Union Railroad Co.; Abandonment of Rail Line in Allegheny County, PA

The Commission has issued a certificate authorizing the Union Railroad Company to abandon its 0.84-mile rail line between Survey Station 190+71 and survey Station 235+10 in Munhall, Allegheny County, PA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

Decided: August 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88–20134 Filed 9–1–88; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Hoechst Celanese Corp.; Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Hoechst Celanese Corporation,* was lodged with the United States District Court for the Western District of North Carolina. That action was brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), pertaining to ground water contamination at Celanese's Fiber Operations facility near Shelby, North Carolina.

Under the Consent Decree, Celanese agrees to implement the remedy selected by the Environmental Protection Agency ("EPA"), to remedy contaminated ground water at the facility, and to reimburse EPA for its past costs. A prior study performed by Celanese under an administrative order with EPA determined that ground water under the facility was contaminated with various organic chemicals and that remedial action was necessary to clean up the ground water to acceptable standards to prevent migration of contaminated ground water to offsite drinking water wells. Celanese will install ground water extraction wells at its facility and pump and treat contaminated ground water until acceptable levels are reached. Study is continuing at the facility to determine the location of the soruces of the ground water contamination. EPA will choose a remedy for those parts of the Site based on the study's conclusions.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Hoechst Celanese Corporation,* D.J. Ref. 90–11–3–342.

The proposed Consent Decree may be examined at the office of the United States Attorney, Post Office Building, Room 306, Asheville, North Carolina 28802 and at the Region IV office of the U.S. Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365. A copy of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1527, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $5.10 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–20008 Filed 9–1–88; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board Meeting

The Missing Children's Advisory Board will meet in Indianapolis, Indiana on September 22, 1988. The meeting will take place at the Hyatt Regency Indianapolis, One South Capitol Avenue, Indianapolis, Indiana, (317) 632–1234. The public is welcome to attend.

The Board will discuss the annual comprehensive plan and other issues related to missing and exploited children.

For further information, please contact Mary Witten Neal, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531. (202) 724–7655.

Dated: August 29, 1988.

Approved:

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 88–20017 Filed 9–1–88; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on Workforce Quality and Labor Market Efficiency; Meeting

The Commission on Workforce Quality and Labor Market Efficiency was established under the provisions of the Federal Advisory Committee Act to increase the excellence of the American workforce.

A public meeting of the Commission on Workforce Quality and Labor Market Efficiency will be held on September 19, 1988, commencing at 1:00 p.m., in Room S–2508 of the Department of Labor, 200 Constitution Avenue NW., Washington, DC.

The purposes of the meeting are to:

1. Set an agenda for the Commission over the course of the next year.

2. Provide direction to the staff of the Commission for carrying out the agenda.

For additional information, contact: Laurie J. Bassi, Deputy Director, Commission on Workforce Quality and Labor Market Efficiency, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–2313, Washington, DC 20210, telephone (202) 523–6836.

Individuals or organizations wishing to submit written statements pertaining to the agenda of the Commission on Workforce Quality and Labor market Efficiency should send 40 copies to the address given above. Papers will be accepted and included in the record of the meeting if received on or before September 16, 1988.

On October 18, 1988, and thereafter, official records of the meeting will be available for public inspection at: Department of Labor, 200 Constitution Avenue, Room C–2313, Washington, DC.

Signed at Washington, DC this 29th day of August 1988.

Ann McLaughlin,

Secretary of Labor.

[FR Doc. 88–19982 Filed 9–1–88; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Research, Evaluation, Pilot and Demonstration Procurement Plan for Program Year 1988

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plans for Program Year 1988 (July 1, 1988 throught June 30, 1989). The current plans are to implement approximately 39 new projects. These projects will address specific issues related to enhancing the productivity of the American work force. Additional projects may be announced later in the year.

This notice is for information only. The purpose is to alert interested parties to the plan. The notice does not solicit applications or proposals. Solicitations for grant awards (SGSs) and requests for proposals (RFPs) will be published at a later date.

A procurment plan conference will be held for the following purposes:

(1) To summarize ETA's Program Year 1988 procurement plan;

(2) To describe in general terms the agency's procurement processes;

(3) To present the expected timetable for issuance of SGAs and RFPs;

(4) To introduce ETA's, R,E,P&D program to individuals and organizations that have not recently participated in the agency's activities.

No additional substantive detail on the subject areas will be provided at the conference. Further, it will not be necessary to attend the conference in order to participate in any of the procurement actions. The conference should be most valuable for those who have not recently participated in ETA's R,E,P&D programs.

DATE: The procurement plan conference will be held on Friday, October 7, 1988, at 9 a.m.

ADDRESS: The procurement plan conference will be held at the Department of Labor, Department Auditorium, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend the procurement plan conference should call the telephone answering service established to accept responses: (202) 535–0884.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) announces its research, evaluation, pilot and demonstration (R,E,P&D) procurement plan for Program Year 1988 (July 1, 1988 through June 30, 1989). The current plans are to implement approximately 39 new projects. These projects will address specific issues related to enhancing the quality of work, the productivity of workers, and labor market efficiency into the 21st century.

This notice serves to alert interested parties to ETA's plan. It does not solicit applications or proposals. Solicitations for grant award (SGAs) or requests for proposals (RFPs) will be announced in the **Federal Register** and the "Commerce Business Daily," respectively, the months ahead. Some projects will result from intra-agency agreements with such organizations as the Department's Women's Bureau and Bureau of International Labor Affairs, and an agreement with the Department of Health and Human Services. In some cases, these agencies will offer competitions for the projects. Some future competitions may be limited (for example, among States, Service Delivery Areas, or Private Industry Councils under the Job Training Partnership Act (JTPA) program) and, therefore, will be announced only through ETA's administrative communications system. These procurement plans are subject to change; one or more of these may not be issued and/or others may be added. This announcement is for general information purposes to indicate the direction of the R,E,P&D agenda.

There are seven subject areas for these projects. These are:

(1) Workforce 2000,

(2) Youth 2000,

(3) Workplace Literacy,

(4) Worker Adjustment,

(5) Women, Family and Welfare,

(6) Immigration, and

(7) Improving the Training and Employment System.

This announcement consists of three parts. Part I provides general background information concerning the R,E,P&D program. Part II describes the seven subject areas and provides brief project information. Part III discusses the pre-bidders' conference.

Part I—Background

A. Mission of the Employment and Training Administration and its Research, Evaluation, Pilot and Demonstration Program

ETA is the Federal agency with the lead responsibility for the Federal Government's training and employment programs. Both U.S. workers and employers, and ultimately the economy, benefit from the comprehensive system of training and employment programs ETA administers. Its major programs include:

—JTPA which consists of a wide range of activities targeted to individual groups who need job-related assistance, with emphasis on economically disadvantaged youth and adults, dislocated workers, and

others who face severe problems in the job market,

—The Employment Service System which operates as a labor exchange, matching workers with available jobs, as well as carrying out other functions;

—The Unemployment Insurance program which provides limited compensation to workers who lose their jobs through no fault of their own; and

—Trade Adjustment Assistance which is available to workers who lose their jobs as a result of increased imports.

ETA's R,E,P&D program is operated to measure the impact and effectiveness of the agency's various activities, explore new program concepts, techniques and designs, and to assist the Nation in expanding current and future work opportunities and assuring access to those opportunities for all who desire them. ETA carries out its R,E,P&D program through State and local public agencies, private-for-profit and nonprofit organizations, colleges and universities, community-based and labor groups, and other Federal agencies.

B. Workforce 2000

R,E,P&D projects for Program Year 1988, which began on July 1, 1988, will continue to focus on workplace issues confronting the Nation through the year 2000. These issues, initiated in Program Year 1987, were the outcome of a 17-month study sponsored by the Department and included in the report "Workforce 2000: Work and Workers for the Twenty-first Century". The report, prepared by the Hudson Institute, crystallized key issues and questions the Nation must deal with if it is to prosper in the intensely competitive and technologically sophisticated global market of the 21st Century. For example the U.S. must:

—Fully integrate women, blacks, Hispanics, immigrants, and handicapped workers into the economy. The labor force will grow more slowly over the next 16 years than at any time in U.S. history, except during the decade of the Great Depression. The net growth in workers will be predominantly women, blacks and immigrants, sources of labor that have long been underutilized. Because there will be fewer young people beginning their careers overall, this could provide opportunities to bring groups historically underused into full participation in the economy.

—Provide the work force with the education and skills new jobs in the expanding service-oriented economy will demand. Most new jobs in fast growing service industries will require higher levels of reading, math and reasoning skills than traditional jobs in manufacturing industries. Individuals with less than a high school education will face increasing difficulty in finding work and fewer opportunities for good pay and advancement. Yet 700,000 students drop out of school each year, and literacy has become a major problem among young adults.

—Ensure that the increasingly middle-aged work force is adaptable and retains its willingness to learn. The rapidly changing economy will demand workers who are flexible and willing to respond to new opportunities and conditions. Workers with years of experience often lack the flexibility and specialized skills they need to move into expanding industries.

—Reconcile the conflicting demands of work and family responsibilities especially for women. The increase in the labor force participation of mothers, including women with young children, has been striking. As of March 1987, 66.6% of women with children under 18 and fifty-two percent of mothers with children under 2 years were in the labor force. Welfare mothers and displaced homemakers are among groups needing special consideration.

A basic step in meeting these challenges is strengthening ETA's information base. the R,E,P&D procurement plan announced in this notice is designed to provide more complete information to enable the agency to better understand and deal with specific issues.

Part II—Subject Areas

A. Workforce 2000

The U.S. economy is expected to continue to grow at least at its current rate through the year 2000. Nonetheless, the efficiency of our labor markets will be severely tested. More sophisticated jobs will demand greater skills. Fewer young people will be entering the labor market, and a growing fraction will be minorities who are traditionally educationally disadvantaged as a group. Greater flexibility will be demanded of all workers, but particularly the middle aged worker. In the anticipated tight labor market of the year 2000, employers will be forced to either seek out and invest in workers heretofore underutilized, or to bid up wages or export jobs overseas.

A critical part of any planning for the future is a sound information base. The work effort sought through these Workforce 2000 projects is intended to supplement and expand on information bases for National, local, and occupation-specific improvements.

Two of the studies are proposed as interagency agreements with the Department's Women's Bureau and the Department of Health and Human Services.

ETA plans to solicit a support contract to develop background research on current and emerging policy and legislative trends to augment the continuing search for information upon which future public policy can be based.

The dynamism and efficiency of labor markets relies on accessible and timely information. Given the changes that continue to occur in markets for various users and providers of information, ETA intends to evaluate the adequacy of existing Labor Market Information (LMI) systems at Federal, State and local levels. The needs of LMI users at all levels in private industry and in educational institutions need to be assessed.

Apparent shortages in some professional occupations such as nursing have resulted in permitting non-U.S. workers into the country, possibly depressing wages and working conditions. This, in turn, may have further aggravated problems with domestic labor supplies. ETA wishes to research the dynamics that have created the scarcity of such professionals and the resulting policy responses through a series of case studies. Information is needed in order to develop a coherent public policy regarding selective shortages of qualified workers.

Some cities are already presaging future labor shortages in their growing highly skilled service sector. ETA will sponsor through the Women's Bureau a series of community case studies to document the economic and labor market changes and record the perspectives of those directly affected by such labor market changes. The studies in a number of the largest cities with tight labor markets will provide insights into what adjustments and actions will be necessary to cope with these changes.

The joint study with HHS will investigate in finer detail the effects of geographic concentration on unemployment, underemployment, welfare use and dependency. ETA's support will permit the study to be directed to its information needs, with particular attention to young minority males living in such areas.

B. Youth 2000

Improving the educational preparedness of workers is a challenge we must meet to be competitive into the 21st century. This is most important for our young people. Today's youth at risk of dropping out are our entry level workers of the next two decades. They face jobs demanding higher skills in math, reading and communications. Yet recent studies have shown that many of these youth are reading, writing, and computing at levels below present day expectations. Further, many of these youth are disenfranchised from and disillusioned with schools, and fail to see the connection with good paying jobs.

ETA intends to closely examine programs that seem successful in helping our youth make the connection between education and work. A number of programs linking school and employment and training programs with apprenticeship are successfully operating. In an effort to inform and encourage expansion of these school/training-to-work bridges, these programs and the factors that make them successful need to be identified. Publication of a popular booklet about these programs could provide incentives for program operators to get involved in similar ventures, and capture the interest of young people.

Another concern about making connections is in effectively linking many Federal, State and local youth services programs, particularly schools, with JTPA programs serving disadvantaged youth. We need to do a better job of attracting and retaining at-risk youth. An assessment is therefore planed to document effective recruitment practices, and identify gaps in services. Counseling practices/components including the different disciplinary and supportive atmospheres need to be examined as well as the range of services offered to in-school youth.

ETA will solicit a quick-turnaround evaluation capacity for the Job Corps program in support of several initiatives. Recognizing the need for increased communication skills, the Job Corps developed a new GED curriculum with greater emphasis on writing skills. An evaluation is planned to test its effectiveness, and the effectiveness of other new program concepts now being piloted. Another evaluation effort is planned to examine assessment tools for rating the quality of the physical learning environment.

ETA offered a competitive grant, which closed in late August, to promote replication of the Summer Training and Education Program (STEP), which provides summer remediation and life skills instruction. STEP programming has proven to reduce learning losses that usually occur over the summer months.

C. Workplace literacy

As the remainder of this century unfolds, it is expected that jobs requiring higher levels of literacy and analytic skills will increase, and those requiring only strength and manual ability will shrink. Further, the population groups presently in jobs with lesser skill requirements can expect a more difficult time in the job markets ahead, unless their literacy skills are increased. In addition to increased skills, increased flexibility to new working conditions, new technology and new environments will be required. In the rapidly increasing service sector, the jobs will spring up in places to accommodate customers. Job mobility will be required. Effective mobility rests on the premise that skills learned and tested in one area will be rated and recognized in another.

ETA has undertaken a wide variety of programs to explore, test and demonstrate new learning techniques and programs for groups in particular need of enhancing their workplace literacy skills. Most of these R,E,P&D efforts are presently underway. The primary focus of this Program Year's workplace literacy projects will be on assessing the validity of existing testing and certification practices.

Vocational and educational accomplishments are sometimes recognized by certificates of competency which are developed for an acknowledged in only a limited environment. An extensive literature review is needed to assess the competencies certification experience in the training and employment system, including the views of National and State specialists and certifying organizations. The review would serve as the basis for determining the feasibility of developing an employer validated, protable certificate of occupational competencies that would be awarded based upon tested competencies.

The National Academy of Sciences will complete its study of the General Aptitude Test Battery (GATB) Validity Generalization in February. It is expected that their findings will result in additional research or evaluation studies related to the GATB, specific ES applicant groups tested by the GATB, and/or ETA/U.S. Employment Service (USES) test research programs to determine whether the current work priorities meet State and DOL needs and how the test research may be focused upon any deficiencies identified by the NAS review, and answer any concerns arising from the overall GATB review.

Although ETA is not announcing its expectations for further study, it is contingent on findings of the on-going study.

D. Worker adjustment assistance

Trade Adjustment Assistance (TAA) and JTPA Title III Programs are available to assist dislocated workers train for and find new employment. Major new legislation was enacted this year substantially revising and expanding these important programs. Several projects are intended to complement the implementation of these legislative changes.

ETA will solicit an implementation analysis of the new worker adjustment program, documenting startup successes and problems. ETA also intends to evaluate the TAA program to determine its effectiveness in serving workers whose jobs and skills become obsolete because of foreign imports. The program's impact has not been assessed since it became primarily an extended unemployment insurance and job training program in the early 1980's.

In order to promote improved, comprehensive services for dislocated workers, ETA plans to compete multiple grants to States to demonstrate a unified worker adjustment program, fully integrating JTPA Title III and TAA service delivery. Voucher programs for retraining would also be tested and implemented. The intent is to document and disseminate model implementation designs.

When a firm is viable but jobs within it become obsolete because of new technology, upgrade training might be considered. Upgrade training might prevent dislocation by retraining workers in obsolete jobs for new work in their employing firm. However, upgrade training is not available under JTPA Title III, since a layoff notice is required for eligibility. It is allowable under Title II–A, though of limited applicability. Therefore, a study is planned to identify the public policy issues which upgrade training raises, and review previous government sponsored upgrading programs, and the views of unions, employers, and workers toward upgrade training.

E. Women, work and family

Since the mid-1940's the labor force participation rate for women has grown dramatically from about 33% to more than 70%. Last year, 66.7% of women

with children participated in the labor force. The rate for mothers with toddlers was 55.2%, more than double the rate of only 20 years ago.

Contrary to popular belief, most working women (78%) work full-time, and only 17% work part time voluntarily. Estimates for the remainder of the century indicate that women will increase their labor force participation, at a slower rate. By the year 2000, the labor force participation rate for women is expected to reach 81%, while that of men will be nearly 93%.

Clearly, the conflicts between work and family needs will increase. Among these conflicts are the adequacy of arrangements for the care of children and elderly family members. As women continue to work more hours per week and more weeks per year, solutions to this problem will become increasingly critical.

Solutions will have to include flexible hours to care for sick children and dependents, and the overall time and financial resources to raise children. Better paying, full-time, skilled jobs will be needed by many women to adequately care for their families and their own occupational aspirations. A series of projects under this topic area will be funded through an interagency agreement with the Department of Labor's Women's Bureau.

Women have been traditionally underrepresented in apprenticeable and other highly skilled occupations, which also tend to be highly paid. Employment opportunities in the construction trades are expected to increase through the Year 2000. A conference is planned to convene tradeswomen and organizations representing them (such as the construction union) to share information and develop strategies to facilitate women's entry into the skilled trades. The ETA Bureau of Apprenticeship and Training may also participate. It should be noted that a contractor has been selected for the conference.

The Women's Bureau is developing a work and family clearinghouse that will provide current statistics, bibliographic references and an inventory of model employer practices in three work and family areas: child and elder care, alternative work scheduling and flexible leave, and benefit polices. This project will permit the clearinghouse to be augmented by a referral network linking it to major sources of privately maintained information on dependent care. It will also permit an expansion of the data base. Employers, unions, public officials, researchers, and dependent care advocates are among those expected to use the clearinghouse.

Specific implementation information is needed on work and family options for small employers. Generally, it is the large firms who support policies and programs responsive to work and family concerns, such as employer-sponsored day care and flexible benefits and work hours. The majority of employment, however, is in small to medium sized firms. Options are available such as cooperative pooling with other small firms to jointly support a child care center, or a referral system. This project would support the research and publication of ideas and information that could encourage the involvement of these smaller firms.

F. Improving the Training and Employment System

ETA will focus its planned systems improvements in two major areas: JTPA performance management and Unemployment Insurance (UI) progamming.

Some JTPA program operators use 6% funds to experiment with new program designs serving clients with the most severe employment related problems. These programs cost considerably more to operate and may not currently be included in calculations of performance against Title II–A standards. A study is planned to analyze and compare the characteristics of clients, types of training and services provided, costs and outcomes with more typical programs clients. As part of the same RFP, ETA plans to compete a contract for statistical support for the development and refinement of the nationwide system of performance standards.

It is asserted that the countercyclical stimulus that UI dollars have on the economy has decreased by almost one-fourth. A study is planned to develop a methodology to measure the effectiveness of the UI program as a fiscal stabilizer over the course of the business cycle.

ETA plans to offer a contract to research and publish successful UI payment program improvements. The contractor will identify agencies which have developed special organizational structures or mechanism and program processes for the formulation and institution of practical program improvement measures driven by Quality Control data. Case studies will be developed and how-to manuals prepared for distribution to State Employment Security Agencies (SESAs).

States are becoming increasingly reliant on automated systems for basic UI functions. Major disruption of services on a State-wide basis could ensue if a major disaster or deliberate destruction of these systems occurred. Therefore, a general disaster recovery/contingency plan should be developed in the form of a technical assistance guide for State use in such an emergency.

In FY 1987, a new UI cash management/banking system was developed. This permits SESAs to select from numerous cash management techniques and banking system interfaces, to adopt the combination best suited to the individual State, and to provide overall improved UTF cash management. Technical assistance and support are sought to facilitate this transition until staff become proficient in the administration, operation and maintenance of the new system.

G. Immigration

New and proposed immigration legislation, particularly the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA), will promote widespread changes in the conduct of alien labor certification. The Department of Agriculture and three of the Department of Labor's agencies share many of the research and implementation responsibilities. Among these, IRCA charges the Secretaries of Labor and Agriculture to determine the supply conditions facing agricultural employers over the first three years of the next decade. The Department also has responsibilities under IRCA to analyze the impact of employer sanctions on employment, wages and working conditions of U.S. workers and on the economy, and to prepare a triennial report on the economic and labor market impacts of admissions of immigrants, refugees, asylees, and parolees into the U.S.

Two of the proposed projects will be competed by ETA. Four interagency agreements are planned, two each with the Office of the Assistant Secretary for Policy (OASP) and with the Bureau of International Labor Affairs (ILAB).

DOL has consistently proposed changes in legislation which would permit the use of general labor market information as a basis for making permanent alien labor certification determinations rather than the current case-by-case testing of the labor market. Since such a proposal is now being seriously and quickly considered, DOL wishes to begin specific planning for implementation. This implementation study would include identification of suitable data sources, specific criteria for determining shortage/surplus occupations and estimated costs for regular updates of finding. Another planned project would analyze the

current operation of the permanent alien labor certification program, and assess its impact on employers and U.S. workers with the goal of improving its efficiency and effectiveness.

With respect to temporary alien agricultural (H–2A) certifications, ETA/OASP will jointly administer several case study demonstration projects in which a "supply area" of domestic workers will be paired with a "receiving industry" to determine whether "positive recruitment" efforts made by employers to find domestic labor are effective as an alternative to the use of H–2A workers. Also, as required by IRCA, a determination will be made as to whether the "50-percent rule" of the H–2A program should be continued.

To assist in determining the labor supply conditions facing agricultural employers, and the IRCA requirement to stay abreast of changes in wages, working conditions, and recruitment practices, ETA and OASP propose interviewing: (1) A random sample of perishable crop employers to determine how they have adapted to changes in the supply of labor caused by IRCA; and (2) a random sample of workers employed by these employers during peak seasonal crop activities, to determine exit and entry rates of seasonal agricultural workers.

Using R,E,P&D funds through an intra-agency agreement, ILAB plans to fund three studies on the impact of IRCA sanctions on traditionally heavy users of illegal workers. These studies will focus on understanding the employment patterns of illegal workers and how both employers and the newly legalized workers respond to legalization and employer sanctions.

As part of the first phase of the triennial report, ILAB plans to explore information about the labor market behavior of different types of legal alien workers. This would permit more accurate evaluation of calims and counterclaims by those who petition for H–2B (i.e., temporary nonagricultural) workers. The second phase survey methodology would also be developed as part of this study.

Part III—Procurement plan Conference

A procurement plan conference will be held on Friday, October 7, 1988, at 9:00 a.m. at the Department Auditorium of the Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Conference will be held for the following purposes:

(1) To summarize ETA's Program Year 1988 procurement plan:

(2) To describe in general terms the agency's procurement processes;

(3) To present the expected timetable for issuance of SGA's and RFP's; and

(4) To introduce ETA's R,E,P&D program to individuals and organizations which have not recently participated in the agency's activities.

No additional substantive detail on the subject areas will be provided at the conference. Further, it will not be necessary to attend the conference in order to participate in any of the procurement actions. The conference should be most valuable to those who have not recently participated in ETA's R,E, P&D program.

Signed at Washington DC, this 24 day of August, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

[FR Doc. 88–20074 Filed 9–1–88; 8:45]

BILLING CODE 4510-30-M

Job Training Partnership Act: Migrant and Seasonal Farmworker Programs; Preapplications for Federal Assistance, and Solicitation for Grant Application

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of invitation to submit preapplications and funding applications for migrant and seasonal farmworker training and employment programs.

SUMMARY: The Department of Labor announces preapplication and funding application instructions for Program Year (PY) 1989 (July 1, 1989 through June 30, 1990) Migrant and Seasonal Farmworker Programs pursuant to Section 402 of the Job Training Partnership Act (JTPA). Applicants selected for funding will be designated as grantees for PY 1989. In addition, such applicants will not have to recompete for funding for PY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

DATES: No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Preapplications and applications not meeting the conditions set forth in this notice will not be accepted.

Preapplications submitted by mail must be posted by certified or registered mail, return receipt requested, and postmarked no later than September 22, 1988. Preapplications submitted by hand-delivery will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on September 22, 1988.

Applications submitted by mail must be posted by certified or registered mail, return receipt requested, and postmarked no later than October 17, 1988. Applications submitted by hand-delivery will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time, but no later than 4:45 p.m., Eastern Time, on October 17, 1988.

ADDRESS: Preapplications and applications must be mailed or hand-delivered to Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Charles C. Kane, Chief, Division of Seasonal Farmworker Programs, Room N4641, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 535–0500.

SUPPLEMENTARY INFORMATION: This notice consists of: Part I—Introduction, Part II—Preapplication for Federal Assistance, and Part III—Solicitation for Grant Application (SGA). Parts II and III constitute invitations from the Department of Labor (DOL) for public agencies, and private nonprofit organizatoins authorized by their Charters or Articles of Incorporation to provide training and employment, and other services described in this notice, to submit Preapplications for Federal Assistance and funding applications for PY 1989 JTPA Title IV, section 402, Migrant and Seasonal Farmworker Programs.

Part I—Introduction

The DOL announces preapplication and funding application instructions for PY 1989 (July 1, 1989 through June 30, 1990) Migrant and Seasonal Farmworker Programs pursuant to section 402 of the JTPA. Applicants selected for funding will be designated as grantees for PY 1989. In addition, such applicants will not have to recompete for funding for PY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

Background

JTPA established programs to prepare youth and unskilled adults for entry into the labor force, and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment. In accordance with 29 U.S.C. 1501 *et seq.*, regulations promulgated by the DOL to

implement JTPA are set forth at Parts 626 through 638 and 684 of Title 20, Code of Federal Regulations (CFR).

As stated at 20 CFR 633.102, it is the purpose of Section 402 of JTPA, 29 U.S.C. 1672, to provide job training, employment opportunities, and other services for those individuals who suffer chronic seasonal unemployment and undereemployment in the agriculture industry. These conditions have been substantially aggravated by continual advancements in technology and mechanization resulting in displacement and contribute signficantly to the Nation's rural employment problem. These factors substantially affect the entire national economy. Because of farmworker employment and training problems, such programs shall be centrally administered at the national level. Programs and activities supported under this section shall, in accordance with section 402(c)(3) of JTPA:

(1) Enable farmworkers and their dependents to obtain or retain employment;

(2) Allow participation in other program activities leading to their eventual placement in unsubsidized agricultural or nonagricultural employment;

(3) Allow activities leading to stabilization in agricultural employment; and

(4) Include related assistance and supportive services.

Regulations promulgated by the DOL to implement the provisions of Title IV, section 402, of JTPA are set forth in 20 CFR Part 633 and Part 636. (Note: With the announced adoption of the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 29 CFR Part 97 on October 1, 1988, 41 CFR Part 29–70 will no longer be applicable to State and local governments and Indian and Native American entities). These Parts contain all the regulations under JTPA applicable to migrant and other seasonally employed farmworker programs. 20 CFR 633.103(a). Should the regulations at Parts 633 and 636 conflict with regulations elsewhere in 20 CFR, the regulations at Parts 633 and 636 shall prevail with respect to programs and activities governed by these Parts. 20 CFR 633.103(b). Further, should any instructions in this notice conflict with JTPA regulations, the JTPA regulations shall prevail. Applicants should consult and be familiar with 20 CFR Part 633 in its entirety.

Pursuant to 20 CFR 633.201, the DOL will not consider any funding application when fraud or criminal activity has been proven to exist within the applicant organization, or when efforts by the DOL to recover debts established by final agency action have been unsuccessful. Prior to the final selection of an applicant as a potential grantee, the DOL, as provided for in 20 CFR 633.204, will conduct a Responsibility Review of the available records to establish an organization's overall responsibility to administer Federal funds. Any applicant which does not have its application considered or is not selected as a potential grantee because of these provisions shall be advised of its appeal rights.

Comments From the States

Executive Order 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR Part 17, are applicable to this program. Pursuant to these requirements, in States which have established a consultation process expressly covering this program, applications shall be provided to the State for comment. Since States may also participate as competitors for this program, applications shall be submitted to the State upon the deadline for submission to the DOL. 20 CFR 633.202(d).

To strengthen the implementation of E.O. 12372, the DOL specifies the following timeframe for its treatment of comments from the State's Single Point of Contact (SPOC) on JTPA Section 402 applications:

1. As required by 29 CFR 17.8(a)(2), the SPOC must submit comments, if any, to the DOL no later than 60 days after the deadline date for applications;

2. The DOL will forward those comments to the applicant within 10 days of their receipt from the SPOC;

3. The applicant must submit its response to the SPOC's comments, if any, to the DOL no later than 10 days after the date of receipt from the DOL; and

4. The DOL will notify the SPOC of its decision regarding the comments and response, but will not implement that decision for at least 10 days after the SPOC has been notified.

State Planning Estimates

State planning estimates are provided in an Appendix to this notice solely for the purpose of developing the funding applications. These estimates are the same as the PY 1988 allocations. Final allocation levels for PY 1989 will be published at a later date.

Recommendation From the Governor

Following the 1986 review of JTPA section 402 grantee selection procedures, the DOL decided to award five extra rating points in the competition to the one application for each State that receives a recommendation from the Governor. This practice is consistent with the requirement of JTPA section 402(d) that the DOL consult with State and local officials in the administration of Section 402 programs.

The recommendation must be in writing, and will only be accepted if submitted as part of the application package to the Grant Officer. The application deadline date is announced elsewhere in this notice.

Part II—Preapplication for Federal Assistance

All States and the Commonwealth of Puerto Rico are open for competition for section 402 funds for PY 1989. Regulations at 20 CFR 633.105(b)(2) reserve for the DOL the right not to allocate any funds for use in a State whose funding allocation, to be determined by formula at a later date, is less than $120,000.

Applications for Statewide programs are strongly encouraged. Applicants applying for grants shall submit a preapplication consisting of:

(1) A Standard Form 424 Facesheet found in Attachment M to OMB Circular No. A–110;

(2) An attachment identifying, by State or counties, the target area to be served;

(3) For a private nonprofit organization, a recent (within the last six months) certification from a Certified Public Accountant that its financial management system is capable of properly accounting for and safeguarding Federal funds; and

(4) For a public agency, a recent (within the last six months) certification by the Chief Fiscal Officer attesting to the adequacy of the agency's accounting system to properly account for and safeguard Federal funds.

Two copies of the Preapplication for Federal Assistance shall be submitted either by mail or hand-delivery, along with two copies of the following:

(a) A statement indicatiang the legally constituted authority under which the organization functions;

(b) An employer identification number from the Internal Revenue Service and, for nonprofit applicants, proof of the organization's tax-exempt status.

As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, and postmarked no later than September 22, 1988. All hand-delivered preapplications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A

receipt will be provided bearing the time and date of delivery. No hand deliveries will be accepted after 4:45 p.m., Eastern tile on September 22, 1988. No exceptions to these mailing and hand-delivery conditions will be granted. Preapplications not meeting these conditions will not be accepted.

Preapplications for Federal Assistance must be mailed or hand-delivered to: Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

Part III—Solicitation for Grant Application

The DOL is soliciting applications for grants under the provisions of JTPA Title IV, section 402, to provide training, employment opportunities, and other services to migrant and other seasonal farmworkers.

Review of Funding Applications

Applications will be reviewed and rated by a competitive review panel, using the specific review standards cited at 20 CFR 633.203. Panel results are advisory in nature and are not binding on the Grant Officer. In addition, prior to the final selection of an applicant as a potential grantee, the DOL will conduct a Responsibility Review of the available records pursuant to 20 CFR 633.204. This review is intended to establish overall responsibility to administer Federal funds and is independent of the competitive process. Applicants failing to meet the requirements of this section of the regulations will not be selected as potential grantees irrespective of their standing in the competition.

Specific Rating Criteria

The rating criteria and the weights assigned to each are described below:

(i) *An understanding of the problems of migrant and seasonal farmworkers. Range 0 to 20 points.* This factor rates the applicant's analysis of the needs of the target group, and the proposed program's potential to address those needs. Ratings will be based on a clear and concise narrative demonstrating this understanding, and the appropriateness of the proposed program mix of trainng and supportive service to be implemented to meet the identified needs.

(ii) *A familiarity with the area to be served. Range 0 to 20 points.* This factor rates the applicant's knowledge of the socioeconomic characteristics and resources of the target area, and the proposed linkages and coordination; *i.e.*, plans for involving appropriate area agencies and programs in the design and delivery of training and other services proposed to meet the needs of participants. Rating will be based on a clear and concise narrative demonstrating this familiarity, and documented programmatic ties to appropriate area agencies and programs.

(iii) *A previously demonstrated capability to administer effectively a diversified employability development program for migrant and seasonal farmworkers. Range 0 to 30 points.* This factor rates program experience, and capability of meeting or exceeding planned goals. Ratings will be based on the successful past operation of a comprehensive multiactivity training and employment program for farmworkers, and on documentation that planned performance goals were either met or exceeded during the period of performance.

(iv) *General administrative and financial management capability. Range 0 to 30 points.* This factor rates the applicant's managerial experience, and the potential for efficient and effective administration of the proposed program. Ratings will be based on consideration of the administrative expertise of present and proposed managerial and decision-making staff, and the extent to which the management plan demonstrates the ability to capably operate a multiactivity delivery system.

Content and Format of Funding Application

Exclusive of charts or graphs and letters of support and commitment, the funding application should not exceed 75 pages of double-spaced unreduced type. Detailed budget and planning estimates are not to be a part of the funding application. These will be negotiated later with applications selected for grant awards.

The application format must be followed and contain the sections listed below. The sections correspond to the rating criteria listed in the preceding subpart of this notice, so that information pertinent to rating criterion item (i) is contained in Section I, information pertinent to rating criterion item (ii) is contained in Section II, etc.

Section I—Program Approach

This section should describe the applicant's approach to fulfilling the intent of JTPA Section 402. Elements to be included are:

(a) A description of the needs and problems of migrant and seasonal farmworkers in the target area, including the socioeconomic characteristics of the farmworker population to be served:

(b) A detailed description of each major activity and component of the program proposed to meet the identified need, including a discussion of outreach and recruitment, eligibility verification, and participant assessment; and

(c) The rationale for the program mix of training, employability development, and supportive services activities.

Section II—Linkages-Coordination and Delivery System

This section should describe the applicant's current and proposed programmatic ties to appropriate State and local agencies, private nonprofit organizations, and other groups, particularly JTPA/Service Delivery Area entities, providing resources and services to farmworkers such as literacy training and child care services. This section should also describe the method of delivering the program proposed in Section I. Elements to be included are:

(a) A description of linkages to agencies, organizations and institutions within the target area that will result in the coordinated delivery of services to the disadvantaged farmworker population. Letters of commitment documenting appropriate programmatic ties should be attached to the application;

(b) A description of the proposed delivery system, including a list of field/regional office locations and any other delivery agents, and the services to be provided by each;

(c) A labor market assessment with projections for employment growth and specific job opportunities available in the target area; and

(d) An analysis of the extent to which the proposed employment and training program, including linkages and delivery system, is consistent with the labor market assessment.

Section III—Program Experience

This section should describe the applicant's experience in capably administering employment and training programs for migrant and seasonal farmworkers. Elements to be included are:

(a) The type of programs operated, including the contract, grant or agreement number, the name of the funding agency, the amount of funding and the period of performance;

(b) The nature of the training, employability development, and supportive services activities which were provided; and

(c) The actual vs. planned numbers of participants and placements into unsubsidized employment for each program activity; and

(d) Performance standards results.

Section IV—Administration and Staff

This section should describe the applicant's organizational and staffing plans. Elements to be included are:

(a) The number of people presently involved in the administration of the organization and the number of people who will be involved in the administration of the proposed program, including job titles. Position descriptions of managerial and decision-making positions should be attached;

(b) A description of the management and administration plan including:

(1) Organizational structure;

(2) Personnel management procedures;

(3) Fiscal accounting system, including a plan for maintaining cash on hand at a reasonable level, not to exceed an average daily need; the allowance payment system, if applicable; and fiscal reporting procedures;

(4) Participant tracking and reporting system;

(5) Internal monitoring system;

(6) Program evaluation system;

(7) Property management system;

(8) Participant grievance procedures; and

(9) Equal Employment Opportunity policy.

Submission of Funding Application

Three copies of the funding applications shall be submitted either by mail or hand-delivery. As noted earlier in this announcement, mailings must be posted by registered or certified mail, return receipt requested, no later than October 17, 1988. All hand-delivered applications will be accepted daily between the hours of 8:15 a.m. and 4:45 p.m., Eastern Time. A receipt will be provided bearing the time and date of delivery. No hand-deliveries will be accepted after 4:45 p.m., Eastern Time, on October 17, 1988. No exceptions to these mailing and hand-delivery conditions will be granted. Applications not meeting these conditions will not be accepted.

Funding applications must be mailed or hand-delivered to: Robert D. Parker, Grant Officer, ETA, Room C4305, 200 Constitution Avenue, NW., Washington, DC 20210.

Notification of Selection

The following conditions are applicable, pursuant to 20 CFR 633.205:

(a) Respondents to this SGA which are selected as potential grantees will be notified by the DOL. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant, will establish a reasonable time and place for the negotiation, and will indicate the State or area to be covered by the grant. Grants will be awarded for the performance period July 1, 1989 to June 30, 1990. Applicants selected will not have to recompete for funding for FY 1990 (July 1, 1990 to June 30, 1991) if applicable regulatory requirements are met, an acceptable training plan is submitted, and funds are available.

(b) In the event that no grant applications are received for a specific State or area or those received are deemed to be unacceptable, or where a grant agreement is not successfully negotiated, the DOL may give the Governor first right to submit an acceptable application pursuant to the Precondition for Grant Application and Responsibility Review tests at 20 CFR 633.201 and 633.204, respectively. Should the Governor not accept the offer within 15 days after being notified, the Department may then: (1) Designate another organization or organizations, (2) reopen the area for competitive bidding, or (3) use the funds for national account activities.

(c) An applicant whose grant application is not selected by the DOL to receive JTPA Section 402 funds will be notified in writing.

(d) Applicants who submit grant applications which have been rejected may not resubmit a new grant application for the State(s) or area(s) in which they are interested in providing services until the jurisdiction is announced by the DOL as reopened for competition.

(e) Any applicant whose grant application is denied in whole or in part by the DOL will be advised of its appeal rights.

Signed at Washington, DC, this 23rd day of August, 1988.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Charles C. Kane,

Chief, Division of Seasonal Farmworker Program.

Robert D. Parker,

Grant Officer, Division of Acquisition and Assistance.

Roberts T. Jones,

Acting Assistant Secretary of Labor.

Appendix—U.S. Department of Labor Employment and Training Administration PY 1988 MSFW Allotment to States

	Allotment
Alabama	$866,160
Alaska	0
Arizona	1,229,762
Arkansas	1,275,909
California	10,065,737
Colorado	821,256
Connecticut	203,922
Delaware	122,633
District of Columbia	0
Florida	4,446,057
Georgia	1,712,016
Hawaii	270,706
Idaho	934,079
Illinois	1,198,137
Indiana	851,759
Iowa	1,445,131
Kansas	741,465
Kentucky	1,498,307
Louisiana	873,730
Maine	360,686
Maryland	314,554
Massachusetts	316,152
Michigan	942,849
Minnesota	1,407,443
Mississippi	1,604,547
Missouri	1,207,423
Montana	738,683
Nebraska	842,243
Nevada	154,220
New Hampshire	120,103
New Jersey	302,676
New Mexico	553,108
New York	1,645,506
North Carolina	3,205,351
North Dakota	519,071
Ohio	995,475
Oklahoma	635,257
Oregon	1,021,691
Pennsylvania	1,318,740
Rhode Island	0
South Carolina	1,179,787
South Dakota	768,385
Tennessee	1,052,966
Texas	5,217,228
Utah	256,408
Vermont	235,979
Virginia	1,068,299
Washington	1,710,814
West Virginia	241,190
Wisconsin	1,351,369
Wyoming	221,058
Puerto Rico	3,206,973
Formula Total	63,273,000
TA/Housing	2,299,000
Grant total	65,572,000

[FR Doc. 88-20075 Filed 9-1-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes

of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled, "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Louisiana:
LA88-7—pp. 408a–408b

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT88-1 (Jan. 8, 1988)—pp. 63,66
District of Columbia:
DC88-1 (Jan. 8, 1988)—pp. 81–82
New York:
NY88-2 (Jan. 8, 1988)—pp. 688,691–692
NY88-3 (Jan. 8, 1988)—p. 702
NY88-6 (Jan. 8, 1988)—p. 729
NY88-7 (Jan. 8, 1988)—p. 740
NY88-11 (Jan. 8, 1988)—p. 782
NY88-12 (Jan. 8, 1988)—p. 794
NY88-17 (Jan. 8, 1988)—p. 820–822
Pennsylvania:
PA88-5 (Jan. 8, 1988)—p. 880
Virginia:
VA88-15 (Jan. 2, 1988)—p. 1154
VA88-17 (Jan. 2, 1988)—p. 1160b

Volume II

Illinois:
IL88-12 (Jan. 8, 1988)—p. 165
IL88-14 (Jan. 8, 1988)—p. 186
Kansas:
KS88-7 (Jan. 8, 1988)—p. 352
Louisiana:
LA88-3 (Jan. 8, 1988)—p. 374
Missouri:
MO88-1 (Jan. 8, 1988)—p. 586
Texas:
TX88-9 (Jan. 8, 1988)—p. 958
Wisconsin:
WI88-4 (Jan. 8, 1988)—p. 1096

Volume III

Washington:
WA88-1 (Jan. 8, 1988)—pp. 361,369

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 26th day of August 1988.

Alan L. Moss,

Director, Division Of Wage Determinations.

[FR Doc. 88-19851 Filed 9-1-88; 8:45 am]
BILLING CODE 4510-27-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of

the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303(a).

DATE: Requests for copies must be received in writing on or before October 17, 1988. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the dispostion process will be furnished to each requester.

Schedules Pending

1. Department of the Army (N1–77–88–2). Raw data of the Corps of Engineers New England Division pertaining to the Passamaquoddy tidal power project.
2. Department of the Army (N1–AU–88–12). Civil Works project and operations files of the Office of the Chief of Engineers. (Significant corresponding field office records are designed for permanent retention.)
3. Defense Intelligence Agency (N1–373–88–3). Routine and facilitative communications records of the Defense Intelligence Agency.
4. General Accounting Office, General Services and Controller (N1–411–88–1). Records relating to the merit selection process.
5. Department of Justice, U.S. Parole Commission (N1–438–88–1). Case files on inmate and parolee participants in the federal witness security program.

Dated: August 29, 1988.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 88–20045 Filed 9–1–88; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 10, 1988, in Room P–118, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the **Federal Register** on August 26, 1988. The agenda for September 10 is revised as follows to include a discussion of classified information.

Saturday, September 10, 1988

8:30 A.M.–12:00 Noon and 1:00 P.M.–2:00 P.M.—Preparation of ACRS reports on matters considered during this meeting and proposed resolution of A–45, Decay Heat removal and the High Temperature Gas Cooled Reactor considered during the 340th meeting of the Committee.

2:00 P.M.–3:30 P.M.: ACRS Subcommittee and Member Activities (Open/Closed)—Report and discussion of recent meetings on Thermal-Hydraulic Phenomena and Feedback of Operational Safety Experience from Nuclear Plants.

Portions of this session will be closed as required to protect information provided in confidence by a foreign source and to discuss classified information.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be otained by a prepard telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of the September 10, 1988 meeting, as noted above, to protect information provided in confidence by a foreign source [5 U.S.C. 552(c)(4)], and to discuss classified information [5 U.S.C. 552b(c)(1)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Farley (telephone 301/492–4516), between 8:15 A.M. and 5:00 P.M.

Date: August 30, 1988.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 88–20025 Filed 9–1–88; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 4.19, "Guidance for Selecting Sites for Near-Surface Disposal of Low-Level Radioactive Waste," provides guidance on site selection to be conducted in steps with the goal of finding a site that has a reasonable likelihood of being licensed.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 24th day of August 1988.

For the Nuclear Regulatory Commission.

Themis P. Speis,

Deputy Director for Generic Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 88–20026 Filed 8–31–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-313 and 50-368]

Arkansas Power & Light Co.; Exemption

I

Arkansas Power & Light Company (AP&L or the licensee) is the holder of Facility Operating License Nos. DPR–51 and NPF–6 which authorize the operation of Arkansas Nuclear One, Units 1 and 2 (the facilities) at steady state power levels not in excess of 2568 and 2815 megawatts thermal respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The facilities are pressurized water reactors (PWRs) located at the licensee's site in Pope County, Arkansas.

II

10 CFR 50.71, "Maintenance of records, making of reports," sets forth the requirements for recordkeeping and reporting in connection with licensed activities. Paragraph (e) of this section sets forth specific requirements for the filing of annual evisions to the Final Safety Analysis (FSARs).

III

By letter dated May 13, 1988 as supplemented July 19, 1988, AP&L requested an exemption from the schedular requirement of 10 CFR 50.,71(e)(4). The specific exemption requested was a one-time 90-day exension of the filing date for the year 1988 annual FSAR revisions for the facilities. The date of the last previous FSAR revisions for the facilities was July 22, 1987. Therefore, the licensee requests that the annual filing date be moved, this one time, from July 22 to October 20, 1988. It should be noted that the staff is requiring that this delayed revision reflect all changes to the facilities through April 20, 1988, and that all future revision filing dates shall be July 22.

The staff's principal concern was that a delay in revising the FSAR could lessen the FSAR's effectiveness in support of safey-related activities by AP&L. However, the need for the filing date extension was to allow completion of the licensee-initiated Safety Analysis Report (SAR) Upgrade Project, which was delayed by the sixth refueling outage on Unit 2. The grant of this exmption would allow the benefits derived from the SAR Upgrade Project to be incorporated into the 1988 annual FSAR revision. This SAR Upgrade project goes beyond the requiremnts of 10 CFR 50.71(e) in regard to what must be included in the annual FSAR revisions. Begun in April of 1987, it has included a chapter-by-chapter detailed technical review of the entire FSARs for both facilities. The SAR Upgrade Project should result in a better defined and more comprehensive licensing basis, which will greatly enhance the effectiveness of the FSARs in support of safety-related activities. Therefore, the staff concludes that the granting of the 90-day filing date extension will not result in an adverse impact on public health and safety, and should improve the quality of safety related activities of AP&L because of the significant improvements to be made in the quality of the FSARs.

The special circumstances of 10 CFR 50.12 apply in that the exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption. In this case, no decrease in safety is expected and a benefit to the health and safety of the public through improved quality in the conduct of safety-related activities by AP&L, should be realized.,

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.,12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(iv), are present justifying the exemption, namely that the exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.

Accordingly, the Commission hereby grants the exemption from the schedular requirement of 10 CFR 50.71(e)(4) as described in Section III above.

Pursuant to 10 CFR 51.32 the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (53 FR 29398).

The Safety Evaluation concurrently issued and related to this action and the licensee's May 13 and July 19, 1988 submittals are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Technical University, Russellville, Arkansas 72801.

This exemption is effective upon issuance.

For The Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 26th day of August 1988.

Dennis M. Crutchfield,

Director Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 88–20027 Filed 8–31–88; 8:45am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 29, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Amcast Industrial Corp.
Common Stock, No Par Value (File No. 7–3759)
Bond International Gold, Inc.
Ordinary Shares, $.01 Par Value (File No. 7–3760)
Blackstone Income Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–3761)
Colonial Intermediate High Income Fund
Shares of Beneficial Interest, No Par Value (File No. 7–3762)
Comprehensive Care Corp.
Common Stock, $.01 Par Value (File No. 7–3763)
City Trust Bancorp
Common Stock, $2.50 Par Value (File No. 7–3764)
Diagnostic Products Corp.
Common Stock, No Par Value (File No. 7–3765)
Emerald Mortgage Investment Corp.
Common Stock, $.01 Par Value (File No. 7–3766)
Kemper Intermediate Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3767)
MFS Multimarket Total Return Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3768)
Nuveen Premium Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3769)
Warner Comptuer Systems, Inc.
Common Stock, $.01 Par Value (File No. 7–3770)
Allstate Municipal Income Trust II
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3771)
Dreyfus Strategic Government Income, Inc.
Common Stock, $.001 Par Value (File No. 7–3772)
Empresa Nactional de Electricidad S.A.
American Depository Shares, No Par Value (File No. 7–3773)
National Australia Bank, Ltd.
American Depository Shares, No Par Value (File No. 7–3775)
Putnam Intermediate Government Income Trust
Shares of Beneficial Interest, No Par Value (File No. 7–3776)
Chaparral Steel Co.
Common Stock, $.10 Par Value (File No. 7–3777)
York International Corp.
Common Stock, $.001 Par Value (File No. 7–3778)
Spain Fund, Inc. (The)
Common Stock, $1 Par Value (File No. 7–3779)
Score U.S. Corp.
Common Stock, $.30 Par Value (File No. 7–3780)
Copperwald Corp.
$2.48 Convertible Exchangeable Preferred, No Par Value (File No. 7–3781)
Hatteras Income Securities, Inc.
Capital Stock, No Par Value (File No. 7–3782)
JWP, Inc.
Common Stock, $.10 Par Value (File No. 7–3783)
Michigan Energy Resources
Common Stock, $2.50 Par Value (File No. 7–3784)
Oppenheimer Capital, L.P.
Units of Limited Partnership Interest, No Par Value (File No. 7–3785)
Oxford Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3786)
Smucker (J.M.) & Co.
Common Stock, No Par Value (File No. 7–3787)
Tootsie Roll Industries, Inc.
Common Stock, $.69 4/9 Par Value (File No. 7–3788)
Toro Co.
Common Stock, $1 Par Value (File No. 7–3789)
XTRA Corp.
$1.9375 Convertible Preferred B, No Par Value (File No. 7–3790)
Amwest Insurance Group, Inc.
Common Stock, No Par Value (File No. 7–3791)
Banner Industries, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–3793)
Chemical Banking
Class B Common Stock, No Par Value (File No. 7–3794)
Computer Task Group, Inc.
Common Stock, $.01 Par Value (File No. 7–3795)
First Wyoming Bancorp
Common Stock, No Par Value (File No. 7–3796)
Freeport-McMoran Copper, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–3797)
New Jersey Resources Corp.
Common Stock, $2.50 Par Value (File No. 7–3798)
Pauley Petroleum, Inc.
Common Stock, $1 Par Value (File No. 7–3799)
RB Industries, Inc.
Common Stock, $1 Par Value (File No. 7–3800)
Sahara Casino Partners, L.P.
Depository Units, No Par Value (File No. 7–3801)
Sotheby's Holdings, Inc.
Class A Limited Voting Stock, No Par Value (File No. 7–3802)
Union Fed Financial Corp.
Common Stock, No Par Value (File No. 7–3803)
BIC Corp.
Common Stock, $1 Par Value (File No. 7–3804)
Burlington Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–3805)
Century Telephone Enterprises, Inc.
Common Stock, $1 Par Value (File No. 7–3806)
Excel Industries, Inc.
Common Stock, No Par Value (File No. 7–3807)
First Union Corp.
Common Stock, $3.33⅓ Par Value (File No. 7–3808)
Gottschalks, Inc.
Common Stock, $.01 Par Value (File No. 7–3809)
Nova Corp. of Alberta
Common Stock, No Par Value (File No. 7–3810)
Oxford First Corp.
Common Stock, $1 Par Value (File No. 7–3811)
Riedel Environmental Technologies, Inc.
Common Stock, $.01 Par Value (File No. 7–3812)
Wyse Technology
Common Stock, No Par Value (File No. 7–3813)
Alliance Capital Management L.P.
Units, No Par Value (File No. 7–3820)
American Government Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3821)
American Reality Trust, Inc.
Shares of Beneficial Interest, $1 Par Value (File No. 7–3822)
First Boston Strategic Fund

Common Stock, $.001 Par Value (File No. 7–3823)
Finevest Foods, Inc.
Common Stock, $.01 Par Value (File No. 7–3824)
High Yield Plus Fund
Common Stock, $.01 Par Value (File No. 7–3825)
Kemper High Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7–3826)
New American Shoe, Inc.
Common Stock, No Par Value (File No. 7–3827)
National Heritage, Inc.
Common Stock, $.01 Par Value (File No. 7–3828)
Putnam Master Intermediate Income Trust
Shares of Beneficial Interest (File No. 7–3829)
Standard Commercial Corp.
Common Stock, $.20 Par Value (File No. 7–3830)
Universal Medical Buildings, LP
Limited Partnership Units, No Par Value (File No. 7–3831)
Wedgstone Financial
Shares of Beneficial Interest, $1 Par Value (File No. 7–3832)
Zenith Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–3833)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 20, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 88–19996 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26039; File No. SR–NASD–88–9]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Concerning an Amendment to the NASD's "Free-Riding and Withholding" Interpretation

On March 16, 1988, the National Association of Secrurities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, and an amendment thereto on May 5, 1988, to amend the NASD's "Free-Riding and Withholding" Interpretation ("Interpretation") of Article III, Section 1 of the NASD's Rules of Fair Practice by providing members with an alternative means of "hot issue" securities to the accounts of investment partnerships and corporations; including hedge funds, investment clubs and other similar accounts.

The proposed rule change would provide a member or associated person a "safe harbor" presumption of compliance with the requirements of the Interpretation's section on investment partnerships if, prior to executing a transaction with an investment partnership, the member has obtained a copy of a current opinion of counsel stating that counsel reasonably believes that no person with a beneficial interest in the account is a restricted person under the Interpretation and stating that, in providing such opinion, counsel has complied with the specific provisions outlined in the proposal. If the information discloses that a restricted person has a beneficial interest in the account, the transaction can be effected only in compliance with the restrictions of the Interpretation. If a member has actual knowledge that a restricted person has a beneficial interest in the account, the member may not rely upon an opinion of counsel.[2]

The proposal requires the member to maintain in its files a copy of the current opinion of counsel or list of names for at least three years following the members' last sale of a new issue to that account, and to have the information obtained from the account manager or counsel as of a date not more than 18 months prior to a transaction. Also, in connection with sales to accounts of foreign investment partnerships where disclosure of the names of the beneficial owners is prohibited by law, the proposal no longer permits the member to rely on a representation from the account manager tha no restricted person has a beneficial interest in the account.[3] Instead a member must obtain an opinion of counsel stating that no person with a beneficial interest in the account is a restricted person.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 25727, May 20, 1988) and by publication in the Federal Register (53 FR 19076, May 26, 1988).

The Commission received one comment letter, from the Securities Industry Association ("SIA"), on the proposed rule change [4] and the NASD submitted a letter in response.[5] The SIA raises two concerns. First, the SIA asserts that, if there has been no change in the membership of the investment partnership within the previous 18 months, the account manager should be permitted to make such a representation in lieu of obtaining an updated opinion of counsel. The SIA further asserts that, if the composition of the partnership has changed, then the updated opinion of counsel only should be required to address the business affiliations of the new members of the partnership. Second, the SIA believes that, in connection with foreign investment partnerships, the NASD should continue to permit members to obtain representations from the account manager as an alternative means of compliance.

In its response, the NASD states that the NASD Board of Governors and National Business Conduct Committee adopted the "opinion of counsel approach" [6] because it believed that a

[1] *See* 15 U.S.C. 78s(b)(1).

[2] The NASD notes the inability to use the opinion of counsel alternative under these circumstances is "implicit" in the proposal. *See* Securities Exchange Act Release No. 25727 (May 20, 1988), 53 FR at 19077.

[3] The NASD states that this exception was included in the rule to accommodate foreign investment partnerships, and required a member to determine if the law of the particular country in fact prohibited the disclosure of the names of the beneficial owners before it could accept a representation from the account manager.

[4] Letter to Jonathan G. Katz, Secretary, SEC, from Dennis Greenwald, Chairman, Federal Regulation Committee, SIA, dated June 22, 1988.

[5] Letter to Katherine A. England, Branch Chief, SEC, from John F. Mylod, Assistant General Counsel, NASD, dated July 19, 1988.

[6] An earlier proposal would have permitted members to rely upon a blanket representation from the account manager. *See* NASD Notice to Members 86–40, May 23, 1986.

representation frm the account manager is not adequate to assure an appropriate degree of reliability. The NASD believes that adopting the SIA's suggestion would undermine its attempt to assure that members are provided with an accurate report of the status of the account. The NASD does not agree that obtaining a new opinion of counsel every 18 months necessarily will result in inappropriate added costs. The NASD believes that the fees charged by the attorney who provided the original opinion of counsel normally should be less for updating an opinion previously provided, particularly where there have been no intervening changes or few intervening changes in the ownership of the account.

With respect to the SIA's second suggestion, the NASD believes that in order to achieve an appropriate degree of accuracy, members should be permitted to rely only upon a representation in the form of an opinion of counsel. In this regard, although the SIA expressed reservations about the reliability of opinions of foreign counsel who may be subject to varying standards of professional responsibility, the NASD noted that its proposal requires the opinion of counsel to be issued by an attorney admitted to practice in the United States. While the NASD recognizes that there may be somewhat greater difficulty associated with obtaining an opinion of counsel for a foreign account compared with a domestic account, the NASD believes that the purposes of the proposal override any such inconvenience.

The Commission carefully has considered the comment letter and believes that the NASD adequately has addressed the concerns expressed by the commentator. The NASD has designed an alternative means of complying with the Interpretation. As such, a member is still free to follow its current practices. Accordingly, the Commission believes it is appropriate for the NASD to develop specific safeguards to ensure that its "safe harbor" is not subject to abuse.

As a separate matter, the NASD received seven comment letters in response to its Notice to Members 87–73 originally proposing the safe-harbor. Of these comment letters, two objected to the opinion of counsel portion of the proposed rule change because in their view it appeared to require lawyers to conduct a factual "audit" before rendering an opinion.[7] The commentators argued that such an inquiry by lawyers goes beyond the standards established by the Code of Professional Responsibility of the ABA. In its filing, the NASD states that it gave active consideration to this concern and that the NASD Board of Governors and National Business Conduct Committee concluded that the degree of factual inquiry contemplated by the proposal is consistent with the applicable provisions of the ABA's Code of Professional Responsibility which does require reasonable inquiry into the facts upon which legal opinions on securities law matters are based.

The Commission carefully has considered these comment letters along with the applicable provisions of the ABA's Code of Professional Responsibility [8] and believes reasonable inquiry into the facts contemplated by the proposed opinion of counsel is consistent with the standards established by the ABA's Code of Professional Responsibility.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

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: August 29, 1988.

[FR Doc. 88–19997 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26040; File No. SR–NSCC–88–06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Securities Clearing Corporation

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 August 11, 1988, National Securities Clearing Corporation ("NSCC") 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 NSCC. 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 rule change reduces the charge for flip trades.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC 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 purpose of the proposed rule change is to change the fees from $.15 per side to $.05 per side for NSCC's Flip Trades as of July 1, 1988.

The proposed rule change provides for the equitable allocation of reasonable fees among its participants and is, therefore, consistent with the requirements of the Act, as amended and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

---

[7] Letters to Lynn Nellius, NASD, from Paul B. Uhlenhop, Law Offices of Lawrence, Kamin, Saunders & Uhlenhop, and James H. Cheek III, Linda A. Wertheimer and Lawrence C. Tondel, American Bar Association ("ABA"), dated November 18, 1987 and December 23, 1987, respectively.

[8] *See* Model Code of Professional Responsibility DR 7–102(A)(5) and DR 1–102(A)(4). *See also* ABA Comm. on Professional Ethics and Professional Responsibility, Formal Op. 335 (1974).

[1] For purposes of this rule proposal, a "flip trade" is a trade where an NSCC participant does its trade comparison through NSCC but the settlement is transferred to the account of another NSCC participant, which guarantees the trade on behalf of the initial participant. Such trades are frequently used by participants having a parent-subsidiary relationship. Telephone conversation between Alison Hoffman, Attorney, NSCC, and Thomas C. Etter, Attorney, Securities and Exchange Commission, August 17, 1988.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. NSCC will notify the Securities and Exchange Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of the filing of such a 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 the furtherance of the purposes of the Act.

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 provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above (SR–NSCC–88–06) and should be submitted by September 23, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19998 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16540; (811–4974)]

Criterion Equity Trust (formerly, Criterion 1000 Louisiana Trust); Application

August 29, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Criterion Equity Trust.

Relevant 1940 Act Section: Section 8(f) and Rule 8f–1 thereunder.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The Application was filed on July 5, 1988, and amended on August 26, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 22, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 1000 Louisiana, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272–3420, or Brion R. Thompson, Branch Chief (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Brancyh in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations: 1. On January 8, 1987, Applicant filed Form N–8A to register under the 1940 Act as an open-end, diversified management investment company. On March 17, 1987, Applicant also filed Form N–1A pursuant to the 1940 Act and the Securities Act of 1933, but such registration statement did not become effective and Applicant never made a public offering of its securities. Applicant does not have any assets or liabilities. Applicant has no shareholders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

2. Applicant has terminated its legal status as a business trust under the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–19999 Filed 9–1–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2317]

Pennsylvania; Declaration of Disaster Loan Area

The City of Perkasie, Pennsylvania, constitutes a disaster area as a result of damages from a fire which occurred on June 26, 1988, at 7th and Market Streets. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on October 24, 1988, and for economic injury as a direct result of this fire until the close of business on May 24, 1989, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses without credit available elsewhere	4.000%
Businesses (EIDL) without credit available elsewhere	4.000%
Other (non-profit organizations including charitable and religious organizations	9.000%

The number assigned to this disaster is 231705 for physical damage and for economic injury the number is 665000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: August 24, 1988.

James Abdnor,

Administrator.

[FR Doc. 88–20014 Filed 9–1–88; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 07/07-0093]

First of Nebraska Investment 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 First of Nebraska Investment Corporation, First National Center, 16th and Dodge Streets, Omaha, Nebraska 68102, 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.*) and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and principal stockholder of the Applicant are as follows:

Name and position	Percentage of shares owned
John R. Lauritzen, 6621 Underwood Street, Omaha, Nebraska 68132, Chairman of the Board	0
J. William Henry, 6625 Burt, Omaha, Nebraska 68132, Treasurer, Director	0
Dennis A. O'Neal, 2223 South 86th Avenue, Omaha, Nebraska 68124, Director	0
Bruce R. Lauritzen, 608 Fairacres Road, Omaha, Nebraska 68132, President, Director	0
Eric S. Turille, 11517 Queens Drive, Omaha, Nebraska 68164 Secretary, Director	0
Frank Phillips Giltner, 658 North 63rd Street, Omaha, Nebraska 68132, Vice President, Director	0
Charles H. Fries, Jr., 2508 Brookside Avenue, Omaha, Nebraska 68124, Senior Managing Officer	0
Steven F. Kros, 8819 Valley View Drive, Omaha, Nebraska 68128, Managing Officer	0
Thomas L. Davis, 1177 California Street, San Francisco, California 94109	0
First National of Nebraska, Inc., One First National Center, Omaha, Nebraska 68102	100

First National Of Nebraska Inc., a bank holding company, will own all issued and outstanding voting common stock of the Applicant. Mr. John R. Laureitzen is the beneficial owner of 46.1% of the parent corporation. Mr. Thomas L. Davis is the beneficial owner of 12.6% of the parent corporation.

The Applicant, will begin operations with $1,000,000 of paid-in capital and paid-in surplus.

The Applicant will conduct its operations in the State of Nebraska and will consider investments in businesses in other areas of the United States.

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.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administration for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Omaha area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 25, 1988.

[FR Doc. 88-20015 Filed 9-1-88; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 04/04-0248]

Mariner Venture Capital Corp.; Application for License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*) has been filed by Mariner Venture Capital Corp., (Applicant), 2300 West Glades Road, Suite 440, West Tower, Boca Raton, Florida 33431, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name and position	Percentage of ownership
Gary O. Marino, President/Director	0
Donald D. Redfearn, Vice President/Treasurer	0
Irwin J. Newman, Vice President/Secretary Director	0
[1] Mariner Corporation, Manager/Advisor	100

[1] Mariner Corporation is a business development company. Mr. Gary O. Marino is Chairman, Chief Executive Officer and owns 50.9 percent of Mariner Corporation Common Stock. Mr. Donald D Redfearn is Vice President, Treasurer and owns 2.5 percent of Mariner Corporation Common Stock.

The Applicant will begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long term loan funds for qualified small business concerns.

The Applicant will conduct its operations in the State of Florida.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner 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.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Boca Raton, Florida area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: August 25, 1988.

[FR Doc. 88-20016 Filed 9-1-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 16, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions, (2) approval of minutes of the meeting held on July 22, 1988, (3) Executive Director's Report, (4) Special Committee Activities Report for July-August 1988, (5) approval of RTCA operations and special budgets for 1989 and operations planning budget for 1990, (6) Report of ad hoc committee on RTCA

Federal Charter Proposal, (7) consideration of proposals to establish new special committees, (8) approval of Special Committee 156 Report "Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard," Volumes I and II, (9) consider RTCA action on Fokker B.V. recommendations concerning compatibility of regulations on Marker Beacon RF System, (10) other business, and (11) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 18, 1988.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88–19959 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Air Traffic Procedures Advisory Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held from October 24 through October 27, 1988. Attendance is open to the public, but will be limited to the space available.

FOR FURTHER INFORMATION CONTACT: Mr. Paul H. Strybing, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from October 24, at 1 p.m., through October 27, 1988, at 4 p.m., at the Federal Aviation Administration headquarters, Washington, DC, in the Administrator's Round Room (10th floor). The agenda for this meeting is as follows: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than October 21, 1988. The next quarterly meeting of the FAA ATPAC is planned to be held from January 23 through January 27, 1989, in San Diego, CA. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 22, 1988.

Paul H. Strybing,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 88–19960 Filed 9–1–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: August 29, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0052.

Form Number: IRS Forms 990-PF and 4720.

Type of Review: Revision.

Title: Return of Private Foundation or section 4947(a)(1) Trust Treated as a Private Foundation (990-PF); Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Revenue Code (4720).

Description: Internal Revenue Code (IRC) section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940–1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947(a)(1) trusts may file Form 990-PF in lieu of Form 1041 under the provisions of sections 6033 and 6012.

Respondents: Businesses or other for-profit, Non-profit institutions.

Estimated Number of Respondents: 43,067.

Estimated Burden Hours Per Response:

Form 990-PF

20 hours and 14 minutes

Form 4720

5 hours and 55 minutes

Frequency of Response: Annually.

Estimated Total Reporting Burden: 941,317 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88–19978 Filed 9–1–88; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 29, 1988.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0036.
Form Number: ATF F 5020.20.
Type of Review: Extension.
Title: Form Letter—Personnel Inquiry Re: Applicant for Federal Permit.
Description: ATF F 5020.20 verifies references given by a person applying for an ATF permit or license. The information requested of a respondent asks for the following character traits of an applicant-integrity, business responsibility and general reputation for conformity with laws and regulations and length of association respondent has known applicant.
Respondents: Individuals or households, Businesses or other for-profit, Small business or organizations.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,500 hours.

OMB Number: 1512–0115.
Form Number: ATF F 5220.4 (2140).
Type of Review: Extension.
Title: Monthly Report—Export Warehouse Proprietor.
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor including receipts, dispositions and on-hand quantities. ATF F 5220.4 (2140) is used for product accountability and is examined by regional office personnel.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 241.
Estimated Burden Hours Per Response: 49 minutes.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 2,343 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 88–19986 Filed 9–1–88; 8:45 am]
BILLING CODE 4810–25–M

[Supplement to Department Circular—Public Debt Series—No. 22–88]

Treasury Notes, Series AE–1990

Washington, August 24, 1988.

The Secretary announced on August 23, 1988, that the interest rate on the notes designated Series AE–1990, described in Department Circular—Public Debt Series—No. 22–88 dated August 18, 1988, will be 8⅝ percent. Interest on the notes will be payable at the rate of 8⅝ percent per annum.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 88–19947 Filed 9–1–88; 8:45 am]
BILLING CODE 4810–40–M

[Supplement to Department Circular—Public Debt Series—No. 23–88]

Treasury Notes, Series M–1993

Washington, August 25, 1988.

The Secretary announced on August 24, 1988, that the interest rate on the notes designated Series M–1993, described in Department Circular—Public Debt Series—No. 23–88 dated August 18, 1988, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Marcus W. Page,
Acting Fiscal Assistant Secretary.
[FR Doc. 88–19948 Filed 9–1–88; 8:45 am]
BILLING CODE 4810–40–M

UNITED STATES INFORMATION AGENCY

University affiliations Program; Solicitation of Services

The United States Information Agency seeks to secure the services of an organization to assist in the processing and review of proposals for the FY 1989 University Affiliations Program. The University Affiliations Program strives to promote institutional relations between American and foreign institutions of higher education.

Washington based educational organizations with experience in international education, with emphasis on educational exchanges, are invited to submit proposals for a cooperative agreement award from the Agency. For application information, please contact Dr. Winnie D. Emoungu no later than September 19, 1988 at the following address: University Affiliations Program (E/AS), Office of Academic Programs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, Phone: (202) 485–8489.

Dated: August 26, 1988.

Omar G. Encarnacion,
Program Officer.
[FR Doc. 88–20010 Filed 9–1–88; 8:45 am]
BILLING CODE 8230–01–M

VETERANS' ADMINISTRATION

Geriatrics and Gerontology Advisory Committee; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Geriatrics and Gerontology Advisory Committee has been renewed for a two year period beginning August 15, 1988, through August 15, 1990.

Dated: August 19, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,
Committee Management Officer.
[FR Doc. 88–19965 Filed 9–1–88; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 171
Friday, September 2, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application of the New York Futures Exchange for designation as a contract market in CRB Price Index Options
Program Objectives/First Quarter, FY 1989

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88-20149 Filed 8-31-88; 3:40 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Objectives

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88-20150 Filed 8-31-88; 3:40 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 20, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88-20151 Filed 8-31-88; 3:40 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, September 13, 1988.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Rule Enforcement Review
Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 88-20152 Filed 8-31-88; 3:40 pm]

BILLING CODE 6351-01

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, September 12, 1988.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC. 20507

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Office of Communications and Legislative Affairs)
3. Volume I of the Compliance Manual

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 634-6748.

Date: August 30, 1988.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 88-20106 Filed 8-31-88; 2:52 pm]

BILLING CODE 6750-06-M

FEDERAL ELECTION COMMISSION:

DATE AND TIME: Wednesday, September 7, 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 pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, September 8, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth FLoor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-35:
Anthony F. Marra on behalf of the Federal National Mortgage Association
Petition for Rulemaking Filed by Ted Haley Congressional Committee:
Notice of Disposition.
Draft Notice of Proposed Rulemaking on 11 CFR 100.7(b)(8), 100.8(b)(9), 110.11(a)(1)(iv)(A) and 114.8(f)
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. 88-20054 Filed 8-30-88; 4:51 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 32493, August 25, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 31, 1988.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Proposals regarding Federal Reserve Bank building requirements.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: August 31, 1988.

James McAfee, Associate Secretary of the Board.

[FR Doc. 88–20141 Filed 8–31–88; 8:45 am]

BILLING CODE 6210–01–M

Corrections

Federal Register
Vol. 53, No. 171
Friday, September 2, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25147; Amdt. No. 23-36]

Small Airplane Airworthiness Review Program, Amendment No. 1

Correction

In rule document 88-18267 beginning on page 30802 in the issue of Monday, August 15, 1988, make the following corrections:

1. On page 30809, in the first column, under *Proposal 1-6*, in the second paragraph, the sixth line should read "of maximum weight when".

2. On the same page, in the second column, in the second line, before the word "Notice" insert "(".

3. On the same page, in the third column, the second line should read "23-34:".

4. On page 30810, in the second column, in the 12th line and in the 16th line, "is" should read "in".

5. On the same page, in the same column, in the first complete paragraph, in the ninth line, "set/restraint" should read "seat/restraint".

§ 23.787 [Corrected]

6. On page 30814, in the third column, in § 23.787(c), in the second line, "9%" should read "9g".

7. On the same page, in the same column, in amendatory instruction 8, in the second line, "andm" should read "and"

§ 23.807 [Corrected]

8. On the same page, in the same column, in § 23.807(b), in the fifth line, "airplanes" should read "airplane".

§ 23.811 [Corrected]

9. On the same page, in the same column, in § 23.811(a), in the second line, "them" should read "the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8217]

Income Tax; Taxable Years Beginning After December 31, 1953 and OMB Control Numbers Under the Paperwork Reduction Act; Certain Cash or Deferred Arrangements Under Employee Plans

Correction

In rule document 88-17720 beginning on page 29658 in the issue of Monday, August 8, 1988, make the following corrections:

1. On page 29659, in the third column, in the first complete paragraph, in the sixth line, "rational" should read "rationale" and in the ninth line, "received" should read "receive".

§ 1.401(k)-1 [Corrected]

2. On page 29665, in the second column, in § 1.401(k)-1(b)(1)(i), in the 11th line, "section 410(b)(1)(H)" should read "section 410(b)(1)(B)".

3. On page 29666, in the first column, in § 1.401(k)-1(b)(3)(v), in the third line, after "contributions" insert "and qualified matching contributions treated as elective contributions".

4. On the same page, in the same column, in § 1.401(k)-1(b)(4), in the seventh line, "test" should read "tests".

5. On the same page, in the same column, in § 1.401(k)-1(b)(4)(B), in the fourth line, "more" was misspelled.

6. On the same page, in the same column, in § 1.401(K)-1(b)(4)(B)(ii), in the sixth line, "test" should read "tests".

7. On the same page, in the second column, in § 1.401(k)-1(b)(5)(ii), in the 18th line, the section number should read "§ 54.4975-11(a)(5)".

8. On page 29669, in the first column, in § 1.401(k)-1(d)(2)(iv)(B), in the ninth line, after "to" insert "a".

9. On the same page, in the third column, in § 1.401(k)-1(e)(1)(ii), in the third line from the bottom, "§ 1.40(a)-" should read "§ 1.401(a)-".

10. On page 29670, in the third column, in § 1.401(k)-1(f)(3)(ii)(B), in the 12th line, after "respect" insert "to".

11. On page 29671, in the first column, in § 1.401(k)-1(f)(3)(v), in the *Example*, in the third line after the table, "7.50% [2]" should read "7.50%/2".

12. On the same page, in the second column, in § 1.401(k)-1(f)(3)(v), in *Example* (v), in the seventh line, ".50" should read ".05".

13. On page 29673, in the second column, in § 1.401(k)-1(h)(4)(iii)(B), in the first line, remove "the" and in ninth line, "high-" should read "highly-".

§ 1.402(a)-1 [Corrected]

14. On page 29673, in the third column, in § 1.402(a)-1(d)(1), in the eighth line, after "to" insert "a" and in the third line from the bottom, "§ 1.40(k)-" should read "§ 1.401(k)-".

15. On page 29674, in the first column, in § 1.402(a)-1(d)(3)(ii), in the 6th line, after "of" insert "a" and in the 11th line, after "of" insert "a".

16. On the same page, in the first column, in § 1.402(a)-1(d)(3)(iv), in the second line, after "of" insert "a".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[EE-158-86, 160-86]

Excise and Income Taxes; 401(k) Arrangements Under the Tax Reform Act of 1986 and Nondiscrimination Requirements for Employee and Matching Contributions

Correction

In proposed rule document 88-17721 beginning on page 29719 in the issue of Monday, August 8, 1988, make the following corrections:

1. On page 29720, in the first column, in the second complete paragraph, in the seventh line, after "Estimated" insert "annual".

2. On the same page, in the second column, in the first complete paragraph, in the 11th line, after "of" insert "the".

3. On the same page, in the third column, in the first complete paragraph, in the last line, "in" should read "on".

§ 1.401(k)-1 [Corrected]

4. On page 29725, in the third column, in § 1.401(k)-1(d)(1)(ii), in the eighth line, "of" should read "if".

5. On page 29727, in the first column, in § 1.401(k)-1(e)(6)(ii), in the 17th, "benefits" should read "benefit".

6. On page 29728, in the second column, in § 1.401(k)-1(f)(4)(ii)(C), in the last line, after "day" insert "will be treated as having been made on the first day".

7. On the same page, in the third column, in § 1.401(k)-1(f)(4)((vi), in the fourth line, "rate" should read "rata".

8. On page 29729, in the first column, in § 1.401(k)-1(f)(5)(ii), in the 7th line, after "employee" insert "to elect" and in the 10th line, "recharacterization" should read "recharacterized".

9. On the same page, in the second column, in § 1.401(k)-1(f)(7), in *Example (1)*, in the first paragraph under the table, in the third line, "414(g)" should read "414(q)".

10. On the same page, in the third column, in § 1.401(k)-1(f)(7), in *Example (3)*, in the sixth line, "compensated" should read "compensation".

§ 1.401(m)-1 [Corrected]

11. On page 29733, in the third column, in § 1.401(m)-1(d), in *Example (3)*, in the first line after the table, "This" should read "The".

12. On page 29737, in the first column, in § 1.401(m)-1(e)(6), in *Example (4)*, the 11th line should read "aggregate contributions in plan C by distributing".

13. On the same page, in the same column, in § 1.401(m)-1(e)(6), in *Example (5)*, in the 9th line, "This" should read "Thus" and in the 12th line, "if" should read "is".

14. On page 29738, in the second column, in § 1.401(m)-1(f)(13)(iii)(*1*), the third line should read "contributions, matching contributions compensation, and amounts treated as matching contributions of".

§ 1.401(m)-2 [Corrected]

15. On page 29739, in the third column, in § 1.401(m)-2(b)(1)(ii), in the fifth line, "sum" should read "such".

16. On page 29745, in the first column, in amendatory instruction Par. 20, the second line should read "after § 54.4979-0 and new § 54.4979-1 to read as follows:"

17. On the same page, in the second column, in § 54.4979-1(c)(1), in the 16th line, "plan" was misspelled.

BILLING CODE 1505-01-D

Federal Register

Friday
September 2, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33
RIN 2120-AA28
Rotorcraft Regulatory Review Program; Amdt. No. 3; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket No. 24337; Amdts. 1-34, 27-23, 29-26, and 33-12]

RIN 2120-AA28

Rotorcraft Regulatory Review Program; Amdt. No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule adopts new and revised airworthiness standards for the powerplant and rotor drive aspects of type certification of normal and transport category rotorcraft. These new and revised standards are necessary because both the government and the rotorcraft industry recognize that the existing certification rules have been outdated by rapidly advancing rotorcraft technology. In addition, extensive experience with certification programs, based on the existing rules, has revealed a need for numerous clarifications in regulatory definitions and terminology, as well as the need for editorial corrections and regulatory simplifications which can materially reduce the burden that the current regulations impose on the rotorcraft industry without derogating safety.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Federal Aviation Administration, Aircraft Certification Division, Fort Worth, Texas 76193-0111, telephone No. (817) 624-5123.

SUPPLEMENTARY INFORMATION: These amendments are the fourth in a series of amendments being issued as a part of the Rotorcraft Regulatory Review Program. The first of the series of amendments in this program addressed applicability and icing certification standards and was published in the **Federal Register** on January 31, 1983 (48 FR 4374). The second of the series of amendments dealt with rotorcraft flight characteristics and systems and equipment and was published in the **Federal Register** on November 6, 1984 (49 FR 44422). The third in the series, Rotorcraft Regulatory Review Program, Amendment No. 5, updated operations and maintenance and was published in the **Federal Register** on November 7, 1986 (51 FR 40692). The amendments in this fourth series involve the powerplant, rotor drive mechanism, and associated support and protective systems for the powerplant and the rotor drive mechanism.

These amendments are based on Notice of Proposed Rulemaking (NPRM) No. 84-19 published in the **Federal Register** on November 27, 1984 (49 FR 46670). All interested persons have been given an opportunity to participate in the making of these amendments and due consideration has been given to all matters presented. A number of nonsubstantive changes and minor changes of an editorial and clarifying nature have been made to the proposals based upon relevant comments received and upon further review by the FAA. Except as indicated herein, the proposals contained in the notice have been adopted without change.

One general comment is worthy of special note. An industry association deplores the fact that some 20 percent of the proposals in the notice were not included in the agenda at the formal Rotorcraft Regulatory Review Program Conference held December 10-14, 1979, in New Orleans, Louisiana. However, as indicated in the preamble to the NPRM, additional proposals which were previously the subject of various rotorcraft certification program special conditions were included, as well as a number of proposals derived by the FAA from ongoing review and day-to-day application of the existing rules. The FAA's plans to amend the certification standards based on these activities were presented to the public at the earliest opportunity by way of the NPRM and every proposal adopted is within the scope of the notice.

A total of seven comments were received. The commenters represented airframe manufacturers, engine manufacturers, rotorcraft owners, and operators. The majority of the commenters agreed with the substance of the NPRM. Several recommended minor changes. These recommendations and their resolutions are contained in the discussion of comments.

Discussion of Comments

The following are keyed to like-numbered proposals in Notice No. 84-19 and are presented in the same order as the corresponding amendments found in the rules portion of this document.

Proposal 3-1. The notice proposed to amend § 1.1 of the Federal Aviation Regulations (FAR) to add a new definition for "rated continuous OEI power" and to revise the definition of existing "rated 30-minute power" and "rated 2½-minute power." This amendment is needed as a part of a program to introduce a new rotorcraft and engine one-engine-inoperative (OEI) rating and to clarify the limitations on the use of the existing 30-minute and 2½-minute power ratings. Two commenters submitted identical objections to the addition of the term "OEI" in the definition of the 30-minute rating. They contend that this change would prevent designers, constructors, and operators of single-engine rotorcraft from taking advantage of this rating to provide extra power during abnormal or emergency operating conditions, and that such denial will reduce the utility and safety of these rotorcraft.

A review of the history and an examination of the qualification programs and the performance credit allowed for this 30-minute rating in both Parts 27 and 29 of the FAR clearly indicate that this rating is intended only as a rating to be used after failure of an engine in a multiengine turbine-powered rotorcraft. Hence, the term OEI is applicable, both from a definitive standpoint and for standardization of nomenclature that becomes apparent in subsequent definitions and usages in the regulations affected by this rule change.

Two commenters also question the need to add the term "OEI" to the "rated 2½-minute (OEI) power" definition of "rated 2½-minute power" since the limitations on the use of this rating are already clear in the current definition. The FAA concludes, as indicated above, that standardization of nomenclature will be achieved by this change and that it may preclude misinterpretation associated with an ongoing and expansive use of the FAR by the foreign rotorcraft community. Therefore, the proposal is adopted without change.

Proposal 3-2. The notice proposed to amend § 1.2 to include, as a new abbreviation, the term "OEI" meaning "one engine inoperative." This abbreviation has found widespread acceptance in the aviation community. No comments were received, and the proposal is adopted without change.

Proposal 3-3. The notice proposed to amend paragraph (b) of § 27.67 to permit rotorcraft climb performance to be determined at "continuous OEI" power for rotorcraft certificated for this power. In addition, the term "30-minute power" would be revised to read "30-minute OEI power." These changes are needed to coordinate and implement the use of the new "continuous one-engine-inoperative (OEI) rating" for rotorcraft and to implement the revision to the definition of "30-minute power" included in Proposal 3-1. This proposal is one of a series of revisions to Parts 1, 27, 29, and 33 which are directed at creating a new continuous OEI rotorcraft power rating. This rating would be available as an alternate to the existing 30-minute OEI rating presumably at a lower power, but without a time limitation. This rating

would enable rotorcraft dispatched on routes requiring en route stay-up ability for more than 30 minutes after an engine failure to carry a higher useful load and thus improve productivity. Rotorcraft operators servicing distant offshore petroleum industry facilities would particularly benefit by the availability of this rating. No comments were received, and the proposal is adopted without change.

Proposal 3–4. The notice proposed to amend § 27.361 to require design consideration of the engine torque loads associated with emergency operation of governor-controlled turboshaft engines and also torque reaction loads from sudden engine stoppage that may be expected with turbine engines. This amendment requires design features to ensure that the engine will remain in place and not jeopardize the continued safe operation of the rotorcraft in the event of these conditions.

One commenter objects to the proposal and contends that the term "sudden engine stoppage" is vague and could be interpreted to mean instant stoppage with the concurrent assumption of infinite loads and is, therefore, unrealistic. However, FAA experience with the application of similar wording regarding engine mount limit loads in corresponding subparts of Parts 23 and 25 indicates that the engine manufacturers can reasonably provide data on inertia of rotating parts and deceleration times to be expected in the event of sudden engine stoppage which generates critical loads. These data should be acceptable for design analysis in this amendment and should avoid the need to consider any concepts regarding infinite and unrealistic loads.

This same commenter objects to the last phrase in proposed paragraph (a)(5) which would have required engine torque limit load values for governor-controlled engines to include the "torque imposed by inadvertent or abnormal control motions to be expected in service." The objection is that this requirement would be unrealistic as well as impractical to apply. Upon reconsideration, the FAA agrees the proposed language could create undue burdens because of difficulty of interpretation or application and, accordingly, proposed paragraph (a)(5) is removed. A similar change to Proposal 3–40 for § 29.361 has been made. This proposal is adopted with these changes.

Proposal 3–5. The notice proposed to amend Part 27 to add a new § 27.833 which is a revised version of the lead-in paragraph of existing § 27.859(c) as it relates to the approval requirements for fuel heaters. This new section is needed to facilitate the extensive changes adopted for § 27.859 in Proposal 3–6 and to achieve parallel rule construction with Part 29. This revision will ensure that all combustion heaters, not just those gasoline-operated, will be approved. No comments were received, and the proposal is adopted without change.

Proposal 3–6. The notice proposed to amend § 27.859 extensively by revising the existing combustion heater design and qualification standards to make them equivalent to those now prescribed in Part 29. This amendment will minimize the probability of hazardous fires from malfunction or failure of combustion heaters. No comments were received, and the proposal is adopted without change.

Proposal 3–7. The notice proposed to amend § 27.901(b)(1) to require satisfactory determination that the affected rotorcraft can operate safely throughout adverse environmental conditions, such as high altitude and temperature extremes. This amendment is needed to provide consistent application of environmental qualification aspects. The notice also proposed to add a new paragraph (b)(5) to require design precautions to minimize the potential for incorrect assembly of components and equipment essential to safe operation. Without such precautions, errors in the assembly and maintenance of the complex systems and equipment found in modern rotorcraft can introduce hazards. No comments were received, and the proposal is adopted without change.

Proposal 3–8. The notice proposed to amend § 27.903 to include a requirement that reciprocating engines must be qualified under § 33.49(d) to be eligible for approval in helicopters. Also, changes were included which prescribe tests and qualifications for powerplant, area cooling fans. This will serve to ensure that correct qualification procedures are used for helicopter engines and that all powerplant cooling fans are properly tested. No comments were received, and the proposal is adopted without change.

Proposal 3–9. Currently § 27.923(e), as it relates to the 2½-minute power rating, and § 27.923(j), as it relates to the 30-minute power rating, provide for only minimal testing of the capability of the rotor drive system to sustain these powers. The notice proposed to amend these paragraphs to extend the testing to adequately assure valid qualification tests. These changes ensure the integrity of the rotor drive system so that it will safely sustain the higher stresses expected with actual, repeated use of these power ratings.

New paragraph (k) provides a qualification test schedule for the optional, continuous OEI rating introduced in the notice by proposed amendments to §§ 1.1, 1.2, and 27.67, and by similar proposed amendments to Parts 29 and 33. This new paragraph is needed to provide a basis for endurance testing qualification for this new rating.

The notice proposed to remove, where applicable, the reference to "engine power" to avoid confusion regarding whether the tests prescribed by this section must be conducted at powers corresponding to engine ratings established under Part 33 rather than rotorcraft powers which may be lower than those established under Part 33 but selected by the applicant as a limit on its product. Also, the notice proposed to add the abbreviation "OEI," where applicable, to coordinate the introduction of this term as defined in an amendment to Part 1.

No comments were received, and the proposal is adopted without change.

Proposal 3–10. The notice proposed to amend § 27.927 to add a requirement that the rotor drive system overtorque tests prescribed by paragraph (b) be conducted at the maximum rotational speed intended for the power condition of the test. The existing rule, which specifies only the torque to be applied to the rotor drive system during the overtorque test, does not otherwise completely define the applicable test requirements.

One commenter objects to the proposal, claiming that to specify the rotational speed as "maximum" would preclude the concept of reducing speed during the test to facilitate achieving required test torque. However, existing paragraph (b)(3) already provides relief from exacting test conditions if there is adequate substantiation. This proposal is, therefore, adopted without change. It is noted that this section, as revised, is not totally parallel with Part 29 but that inconsistency must be considered separately from this rulemaking action as it is beyond the scope of the notice.

Proposal 3–11. The notice proposed to add a new § 27.954 that sets forth requirements for design features to prevent ignition of fuel vapor in the fuel system due to lightning strike to the rotorcraft. Lightning strike and any subsequent strokes which might cause streamering, corona, and arcing associated with a lightning strike can result in catastrophic explosions in the rotorcraft's fuel system. No comments were received, and the proposal is adopted without change.

Proposal 3–12. The notice proposed to amend § 27.955 to reorganize and restate the rotorcraft fuel system flow performance requirements and to add new requirements for test conditions to

ensure that adequate fuel flow is available to the engine in critical combinations of adverse conditions which may be expected during operation of the rotorcraft. Additionally, the amendment requires a correlation between fuel filter blockage and the fuel filter warning device required by existing § 27.1305(q), and provides design and performance standards for auxiliary fuel tank and transfer tank fuel systems. These changes were proposed to ensure that all parameters associated with fuel supply to the engine are adequately addressed.

One commenter suggests that the fuel flow considerations in proposed paragraphs (a)(1) through (a)(7) require an excessive number of tests. Also, the commenter objects to the concept that all of the test conditions should be assumed to occur or exist simultaneously.

Aside from new requirements in this proposal pertaining to fuel filter blockage, the use of critical fuel properties, and critical pump and pump motive power or speed, the statement of flow requirement is not technically changed. The new requirements should be relatively easy to adopt into a carefully planned flow test. However, the FAA agrees that it may be unreasonable to expect all conditions which can adversely affect fuel flow to exist simultaneously, and a phrase allowing the exclusion of improbable combinations of conditions has been added in the final rule.

This same commenter offers without further comment alternate wording for the proposed revisions. Included in this was the suggestion that the fuel pressure (during the fuel flow test) may be allowed to fall below the minimum limit specified by the engine type certificate data sheet during transients for which only safe operation must be shown in flight. The FAA considers that this change would be confusing to the crew (e.g., fuel pressure below the red radial on the fuel pressure gauge) and may even compromise the safety margin established during the engine certification test program. This suggested change is inappropriate and is not included in the amendment.

Another suggested change to the proposal would, in effect, remove any requirement to have fuel flow capability to continue normal engine operation with fuel filter blockage in excess of the degree of filter blockage associated with activation of the indicator required by § 27.1305(q). After considering the success of fuel system performance based on previously approved fuel flow testing methods, the FAA concurs that the proposed requirement may be excessive, and accordingly, the section is revised to only require an adequate flow with filter blockage associated with activation of the warning indicator required by the associated provisions of § 27.1305(g).

Another commenter states that the automatic fuel transfer provisions of new paragraph (b) and revised paragraph (c) are not justified by service experience and will introduce unnecessary complexity in the fuel system. An FAA review of presently certificated rotorcraft fuel systems indicates that most already employ the features of these proposals. Rotorcraft designs and operations often impose a high workload on the flightcrew; therefore, reasonable steps to alleviate this increasingly burdensome trend are not only appropriate but necessary.

The proposal is adopted with the change noted.

Proposal 3–13. The notice proposed to amend § 27.961 to restate the fuel system hot weather qualification requirements and to add a requirement for the system to be capable of providing adequate fuel during overpower transients to be expected. This amendment makes needed improvements to the existing wording of § 27.961 to assure adequate qualification testing. No comments were received, and the proposal is adopted without change.

Proposal 3–14. A new paragraph (b) to § 27.963 would have specified higher load factors in the design and retention of fuel tanks to provide better assurance that the tanks would retain their contents as a means of minimizing postcrash fuel fire hazards. A commenter objects to the higher load factors, stating that these factors will actually degrade fuel system crashworthiness in many cases. The commenter offers an alternate proposal for improved fuel system crash resistance which includes a fuel tank drop test, allowances for relative motion between fuel system components, and a requirement for fuel cells (presumably, bladder cells) to meet the puncture, tear rate, impact penetration, panel, and fitting strength of an unspecified technical standard order.

The drop test suggested by the commenter was previously presented as an FAA proposal at the Rotorcraft Regulatory Review Conference held at New Orleans, and received favorable comments. However, the proposal was not included in the notice because associated benefit/cost studies failed to show a positive beneficial result. Nevertheless, the FAA is interested in continuing efforts to develop regulatory criteria for rational fuel system crashworthy designs for rotorcraft. The FAA is active in related programs in progress at its Technical Center and is also participating in the proceedings of the General Aviation Safety Panel (GASP) as well as studying the progress in this regard of foreign manufacturers. As a result of all of these activities, the FAA expects to develop, in the near future, an NPRM specifically for rotorcraft fuel system crash resistance that would be directly related to the survivability of the occupants. As a result and after further consideration, the portion of the proposal to add a new paragraph (b) is withdrawn, and existing paragraphs (a) through (d) of this section will remain unchanged.

The notice also proposed to add new paragraphs (f) and (g). These additions, now redesignated as paragraphs (e) and (f), respectively, require designs and tests to ensure that no exposed surface inside a fuel tank would, under normal or malfunction conditions, constitute an ignition source. They also set forth standards for the design and qualification of fuel tanks located in personnel compartments. These additions are needed to ensure freedom from the hazards of fuel tank internal explosions and to ensure that fuel tanks in passenger compartments are installed to present no hazards to the personnel or to the rotorcraft. No comments were received regarding this portion of the proposal.

The proposal is adopted with the changes discussed.

Proposal 3–15. The notice proposed to amend § 27.969 so that properly interconnected fuel tanks will not be required to have an expansion space for each tank if adequate expansion space is otherwise provided. This amendment will eliminate unnecessary design requirements when simpler designs have been proven satisfactory. No comments were received, and the proposal is adopted without change.

Proposal 3–16. The notice proposed to amend § 27.971 to prescribe finite, minimum values for fuel tank sump capacity, to authorize the use of a sediment bowl in lieu of a sump, and to require these sumps or sediment bowls to be effective in any ground attitude which can reasonably be expected in service.

A commenter objects to the fuel tank sump volume requirements on the basis that lower sump volumes acceptable under § 29.971 for transport category rotorcraft have been shown by service experience to be adequate for Part 27 rotorcraft. Also, the commenter questions the need for a larger capacity sump bowl than is required for Part 29

rotorcraft. The sump volume selected for the proposed rule is identical to that required for normal category airplanes (Part 23) and, as noted by the commenter, is larger than that required for transport category rotorcraft. In the FAA's view, this difference is warranted when it is considered that general aviation fuel supplies are likely to have more water and other contaminants than may be expected for fuel supplies for transport aircraft. However, the FAA concurs that the 2-ounce-for-every-20-gallons-sediment-bowl requirement of proposed § 27.971(a)(1) is not justified, and after reconsidering it has been changed to 1 ounce for every 20 gallons. The proposal is adopted with this change.

Proposal 3–17. The notice proposed to amend § 27.975 to add a new paragraph (b) which requires fuel tank vent systems to be designed to minimize spillage in the event of rollover of the rotorcraft during landing or ground operation. This is intended to reduce the potential for fuel fires when fuel escapes from a vent port after a rollover and encounters an ignition source. No comments were received, and the proposal is adopted without change.

Proposal 3–18. The notice proposed to amend § 27.991 to restate the existing fuel pump redundancy requirements, to remove unnecessary definitions and detail design requirements, and to extend the requirement for consideration of pump failure to include the fuel pump motivation device (such as a generator for electric pumps). These changes clarify the pump requirements and ensure that the intent of the rule is met; i.e., that fuel flow is adequate regardless of whether the failed component is a pump or the pump's motivating device. No comments were received, and the proposal is adopted without change.

Proposal 3–19. The notice proposed to amend § 27.993 to require fuel lines to be constructed and routed to withstand the same new higher load factors as discussed in Proposal 3–14 for § 27.963. A commenter objects to this new requirement citing the same reasons expressed for paragraph (b) of Proposal 3–14. For the reasons expressed in the discussion of Proposal 3–14, this proposal is withdrawn.

Proposal 3–20. The notice proposed to amend the introductory paragraph of § 27.997 to include a requirement that the fuel filter must be located in the fuel system to protect any component sensitive or susceptible to fuel contamination, including fuel metering devices or pumps. The intent of the proposed amendment has been clarified by inserting the words "but not limited to" in the third line of § 27.997. This will ensure that any component sensitive to fuel contamination, not just fuel metering devices or an engine positive displacement pump, is protected.

A commenter objects to including fuel metering devices in the requirement, stating that fuel meter malfunction due to contaminants will have no effect on fuel flow. It is believed that the commenter is referring to fuel flow rate measuring devices whereas the proposal involves the fuel metering devices intended to control flow rate such as fuel injection devices. These latter items require filter protection from fuel contaminants.

The amendment to paragraph (d) will clarify and limit the scope of the existing rule to only provide for adequate filtration since the capacity aspect of the rule is addressed elsewhere by revisions to §§ 27.955 and 27.1305.

Accordingly, this proposal is adopted without substantive change.

Proposal 3–21. The notice proposed to amend § 27.999 to require fuel system drains to be effective with the rotorcraft in any ground attitude position. This change would ensure effective fuel drainage when the rotorcraft is parked on uneven terrain. In addition, the notice proposed to amend paragraph (b)(2) to require fuel drains to have means to ensure positive closure, as contrasted to positive locking, in the "off" position. This will accommodate designs that feature spring-loaded drain closures which have been found to be satisfactory. No comments were received, and the proposal is adopted without substantive change.

Proposal 3–22. The notice proposed to amend the title of § 27.1011 from "General" to "Engines: General" to reflect the concept that it applies specifically to engine oil systems and not to other systems such as those for transmissions and rotor drive system components. A new § 27.1027 provides standards for oil systems for transmissions and rotor drive systems. No comments were received, and the proposal is adopted without change.

Proposal 3–23. The notice proposed to relax what has been found to be an unduly restrictive requirement in current § 27.1019(a)(3) for an "indicator" to indicate the contamination level of oil filters. The amendment instead allows accepting a "means to indicate" the contaminate level to allow a wider range of acceptable methods of compliance. No comments were received, and the proposal is adopted without change.

Proposal 3–24. New § 27.1027, introduced in the notice, provides oil system standards for transmissions and other drive system components. This amendment complements an amendment to § 27.1011 which limits its scope to engine oil systems. (See Proposal 3–22.) A commenter correctly notes that the reference to paragraph (a)(1) in paragraph (c) should be to paragraph (b). This correction and other minor editorial changes have been made to paragraph (c).

Another commenter suggests that the function of the screen required by paragraph (c) is only to protect the oil pump associated with pressurized lubrication systems. While that function is important, this screen should also serve to prevent any debris, regardless of its source, which could obstruct oil flow from the oil tank or sump, from entering the parts of the system not protected by the screen required by paragraph (b). Paragraph (c), revised as discussed, will accomplish this purpose.

After the consideration of comments received on the oil system proposal for transport rotorcraft (Proposal 3–62), it is apparent that compliance with § 27.1011, which after this amendment pertains only to engine oil systems, should not be required for transmissions and other rotor drive system components. Accordingly, new § 27.1027 is revised to remove reference to § 27.1011. The proposal is adopted with the changes discussed.

Proposal 3–25. The notice proposed to amend § 27.1041 to provide clarification and definition of powerplant components required to be considered when evaluating the performance of the powerplant cooling systems and arrangements. This amendment will minimize needless interpretation or extrapolation of the existing rule.

A commenter suggests that the general powerplant cooling system requirements of § 27.1041 or other appropriate rules should be revised to require the cooling arrangements for rotorcraft gearboxes to be capable of cooling the gearboxes at abnormally high "emergency" temperatures commensurate with continued cruise flight after a failure in the normal cooling system. The commenter claims that such arrangement could eliminate unnecessary and perhaps hazardous, unscheduled landings when the rotorcraft gearbox cooling system actually had the capability, although unknown to the crew, to continue flight. While there is some merit to this, there is adequate information on continued operation in failure modes found in the Emergency Procedures Section of the applicable Rotorcraft Flight Manual. Furthermore, rulemaking on this subject is beyond the scope of the notice. The

proposal is adopted without substantive change.

Proposal 3–26. The notice proposed to add to the powerplant cooling tests required by § 27.1045 an alternate acceptance criterion which may be appropriate if, during the cooling test, component temperatures peak and then decline rather than stabilize. In these instances, the current requirement to continue the test until "stabilization" occurs is unduly restrictive and should be eliminated. No comments were received, and this proposal is adopted without change.

Proposal 3–27. The notice proposed to amend § 27.1091 to remove paragraph (d) since the specific test defined by this paragraph may be meaningless or at least not critical for certain rotorcraft. Further, the turbine inlet foreign-object-ingestion protection provided by paragraph (d) is adequately evaluated by existing § 27.1091(e)(2). No comments were received, and the proposal is adopted without change.

Proposal 3–28. The notice proposed to amend § 27.1093 to relocate the phrase "within the limitations of the rotorcraft" from paragraph (b)(1) to paragraph (b)(1)(ii). This change will restore this phrase to its original and proper context; i.e., as pertinent to the requirements for demonstrating flight into snow. The existing location of the phrase may be read to imply that limitations may be established for the rotorcraft in lieu of demonstrating capability of the engine inlet to operate in icing meteorological conditions. This was not intended or justified by the editorial misplacement to this section made by Amendments 27–9 (39 FR 35461; October 1, 1974) and 27–12 (42 FR 15044; March 17, 1977).

A commenter objects to the proposal stating that the change would require the engine air inlet system to operate in a severe, possibly continuous, icing environment although the rotorcraft to be certificated may be otherwise completely unprotected and incapable of operation in icing conditions. Engine inlet ice protection is required whether or not the remainder of the rotorcraft is protected. This is the reason that engine power assurance during even an inadvertent icing encounter is of critical importance to continued safe flight. Thus, there is an independent requirement for engine air inlet operation in icing conditions regardless of the icing capability of the remainder of the rotorcraft.

Another commenter states that the requirements of § 27.1093(b)(2) for ground operation (taxiing) in certain meteorological conditions should be limited in applicability to rotorcraft which are qualified for flight into atmospheric icing (ref. § 27.1419). A proposal for such a rule change of this order is beyond the scope of the notice and is, therefore, inappropriate in this rulemaking action.

The proposal included changing the reference in paragraph (b) from Appendix C of Part 25 to Appendix C of Part 29. These appendices are identical. This change is required to correlate the airframe icing requirements in § 27.1419 to the powerplant icing requirements of this section.

Accordingly, the proposal is adopted without change.

Proposal 3–29. The notice proposed to amend paragraph (c) of § 27.1141 to extend its applicability to any powerplant valve regardless of the location of the valve control, except that valves are excluded if their function is not required for safety. No comments were received, and this proposal is adopted without change.

Proposal 3–30. The notice proposed to amend paragraphs (a) through (d) of § 27.1143 to replace the terms "throttle control" and "thrust control," which are appropriate only to certain engines, with the more general term "power control." This change should preclude misconceptions regarding engine control arrangements when governor-controlled turboshaft engines are employed in rotorcraft. No comments were received, and this proposal is adopted without change.

Proposal 3–31. The notice proposed to amend paragraph (b) of § 27.1163 to restate the design requirement for accessory drive torque limiting devices in terms which will now allow the torque limiting device to be included in either the accessory or the rotor drive system. This will eliminate the ambiguity in the present rule which implies that the torque limiting device required for accessories must be in the design of the rotor drive system. No comments were received, and the proposal is adopted without change.

Proposal 3–32. The notice proposed to amend § 27.1189 to require flammable fluid shutoff devices and controls for these devices to be designed, located, and protected to function properly under conditions likely to result from a critical fire in a powerplant area. This change eliminates design arrangements wherein valves located outside the fire zone but in close contact to the firewall may be adversely affected by heat transfer through the firewall during a substantial powerplant fire and may interfere with the operation of these shutoff devices, thus, adding to the hazards of an engine fire. No comments were received, and this proposal is adopted without change.

Proposal 3–33. The notice proposed to amend § 27.1193 by adding a new paragraph (f) to require redundant retention means for each openable or readily removable panel, cowling, or engine or rotor drive system covering. Conventional fasteners for these devices are subject to frequent operation by maintenance personnel and are known to deteriorate or fail from wear or vibration. Such failure could be hazardous if it results in a loose panel, cowling, or covering striking or being struck by the rotors or by critical controls.

One commenter requests that proposed § 27.1193(f) be revised to reflect the single failure concept when evaluating the need for redundant cowling or panel retention devices. Such a limitation to the rule would be inappropriate since one failure can contribute directly to loads carried by other retention devices and thus result in multiple failures. The amendment provides relief from multiple failure considerations if such failure modes are extremely improbable. Therefore, the proposal is adopted without change.

Proposal 3–34. Paragraph (1) of § 27.1305 is revised to require a low fuel warning device for each tank that can be used to feed an engine, including single tank configurations. In addition, new wording is added to allow, if desired, a longer time between warning actuation and fuel exhaustion and to require the low fuel warning device to be independent of the normal fuel quantity indicating system. This change will clarify which tanks (i.e., any tank which directly feeds an engine) require low fuel warning devices and allow the designer flexibility to set the device to signal low fuel earlier than 5 minutes before fuel exhaustion if needed for operational reasons. A requirement for the low fuel warning device to be independent of the normal fuel quantity indicator is needed since without independence, errors or malfunctions of the normal indicators could mask the signal to the low fuel warning device and negate its value.

Paragraph (m) currently requires "a means to indicate to the pilot when each emergency pump is in operation." The existing rule was intended to alert crew members to the fact that the primary pump has failed so that appropriate precautions for continued flight in this failure mode may be instituted. Some rotorcraft configurations operate the main pump and the emergency pump simultaneously. Others rely on suction fuel feed systems after failure of the main pump, thus leading to possible confusion regarding acceptable means

of compliance. This proposal revises paragraph (m) to simply state that an indication of pump failure is required. Other rules require continued fuel feed in the event of this type of failure.

One commenter suggests that the proposed change to paragraph (m) should include, as a means of compliance, a preflight check to enable the crew to establish that all fuel pumps are functioning properly. The FAA does not concur because a preflight check would not provide the flightcrew with the in-flight failure indication needed to enable the crew to institute any appropriate precautions associated with continued operation on the remaining derogated fuel system.

The notice proposed to amend paragraph (q) to extend its application to all rotorcraft (not just those with turbine engines) and to require an indication to the crew of the degree of filter blockage established in conjunction with the fuel flow demonstrated in compliance with § 27.955. This change clarifies the intentions of the rule and correlates the setting of the indicator to the fuel system performance.

Paragraph (s), which currently requires an indicator to indicate the functioning of all fuel heaters, is revised to require function indicators only for selectable or controllable fuel heaters. Thermostatically modulated fuel heaters do not need crew attention and a requirement for an indicator for the function of heaters of this type is removed.

No other comments were received. For the foregoing reasons, this proposal is adopted without change.

Proposal 3–35. The notice proposed to amend § 27.1337 to add a new paragraph (e) to require rotor drive system transmissions and gearboxes to be equipped with magnetic chip detectors. These chip detectors are needed to alert the crew of impending failure of ferromagnetic components in these transmissions and gearboxes. No comments were received, and this proposal is adopted without change.

Proposal 3–36. The notice proposed to amend § 27.1521 to add new paragraphs (g), (h), and (i) which establish and define the powerplant limitations associated with OEI ratings. These new paragraphs will ensure proper recognition in the powerplant limitations listing required by § 27.1583(b). No comments were received, and this proposal is adopted without change.

Proposal 3–37. The notice proposed to amend § 27.1549 to add a new paragraph (e) which requires arrangement of instrument markings for OEI ratings to be clearly differentiated from the normal operating limits. This will ensure that instruments are marked to avoid or minimize possible inadvertent use of OEI ratings when operation of the rotorcraft should be limited to the normal operating limits. No comments were received on this proposal; however, it was subsequently noted that the proposed wording would preclude use of the 2½-minute OEI power rating to achieve a safe one-engine-inoperative climbout after a balked landing or to avoid the hazardous zones of the HV diagram if the associated engine failure occurred in conjunction with flight conditions which dictate use of this power. This was not intended or justified, and a revision to this section eliminates this possiblilty. The revision is editorial only.

Proposal 3–38. The notice proposed to amend paragraph (c) of § 29.45 to require published rotorcraft performance to be adjusted conservatively to account for powerplant instrument error. One commenter objects stating that the proposed rule is unnecessary because the subject of powerplant instrument accuracy is already adequately addressed in the guidance contained in paragraph 55 of FAA Advisory Circular 29–2A, "Certification of Transport Category Rotorcraft," dated September 16, 1987. As a result, not just of this comment, out after a review of several similar discussions in Committee II—Propulsion, held at the New Orleans Rotorcraft Regulatory Review Conference, the FAA agrees that the current regulation is adequate on a standalone basis. Accordingly, this proposal is withdrawn.

Proposal 3–39. The notice proposed to introduce in § 29.67 a requirement to determine climb performance at the new "continuous" OEI rating discussed in detail in the explanation for Proposal 3–3 and to revise the term "30-minute power" to read "30-minute OEI power." The new wording of § 29.67 sets forth the requirements for performance at the continuous OEI rating as parallel, alternative performance available to rotorcraft which have met the corresponding component and system qualifications specified by this proposal. Subsequent to issuance of the NPRM, it was brought to the attention of the FAA that engine installations may be designed with a critical engine. The proposal, if adopted, would not account for this design although the original intent was to determine climb performance with loss of the engine in a "worst-case" situation; i.e., the most critical engine. As a result, the rule as adopted has been clarified to substitute "the critical engine inoperative" for "one engine inoperative." These changes will clarify the eligibility and requirements associated with this new continuous one-engine-inoperative rating. No comments were received, and the proposal is adopted with only the change noted.

Proposal 3–40. The notice proposed to amend § 29.361 to set forth new and more realistic design limit torque requirements for turbine engine installations. For a discussion of this proposal, see the discussion under Proposal 3–4 pertaining to § 27.361. Comments received for this proposal are identical to comments received for Proposal 3–4. Accordingly, Proposal 3–40 is adopted with the same changes discussed in Proposal 3–4.

Proposal 3–41. The notice proposed to amend § 29.549(e) to add the term "OEI" to the existing term "2½-minute power." The term "OEI" is a new abbreviation added to § 1.2 by this amendment. This change standardizes and clarifies the title and limitations appropriate for the use of 2½-minute OEI power. No comments were received on this proposal. It is adopted without change.

Proposal 3–42. The notice proposed to amend § 29.901 by revising paragraph (b)(2), adding a new paragraph (b)(6), and revising paragraph (c).

For an explanation of the part of the proposal to revise paragraph (b)(2) and to add a new paragraph (b)(6), see Proposal 3–7. No comments were received, and this part of the proposal is adopted without change.

The proposed change to paragraph (c) would limit the scope of the powerplant systems fault analysis to "single failure or malfunction or probable combination of related secondary failures." Several commenters object to the new wording of paragraph (c) on the grounds that limiting the analysis to "related" secondary failures could result in a lower level of safety. These commenters, who have extensive experience with application of the corresponding rule in Part 25 for transport airplanes, deny that the wording as it now exists would cause a "proliferation of endless failure modes and effects analysis" as contended by the original proponents of the proposed wording. In view of these comments and the FAA's general objective of not lowering the level of safety, the proposed change to paragraph (c) of § 29.901 is withdrawn.

Proposal 3–43. The notice proposed several changes to § 29.903. The first change adds a requirement to paragraph (a) that reciprocating engines used in helicopters must be qualified in accordance with the special helicopter engine testing requirements in § 33.49(d).

This change is needed to ensure that this aspect is not overlooked when such engines are installed in Part 29 programs. No comments were received on this part of the proposal. It is adopted without change.

Another change revises paragraph (b)(2) to identify and clarify crew action; i.e., normal pilot action allowable with primary flight controls, in determining if adequate powerplant systems isolation is provided. Most, if not all, of the power lever motion for rotorcraft engines is mechanically or electronically affected by the flight controls, and this change eliminates any possible confusion that may exist regarding the acceptability of modifying optimum flight control manipulation to protect engine parameters. No comments were received on this part of the proposal. It is adopted as proposed.

New paragraph (c)(3) is added and changes existing paragraph (c) from simply requiring restart capability to requiring the restart capability to be available throughout a flight envelope appropriate to the rotorcraft. This will avoid the concept that an in-flight engine restart envelope which is minimal and impractical constitutes acceptable compliance with this rule.

Due to a printing error, the word "appropriate" was omitted from the Federal Register publication of Proposal 3–43. Paragraph (c)(3) should read, "Engine restart capability must be established throughout a flight envelope appropriate to the rotorcraft."

A commenter notes the ommission and suggests that the engine restart capability should be established throughout a defined flight envelope. This alternate wording, however, could result in certification of rotorcraft with a restart capability so limited as to be of little or no use to the crew. Another commenter suggests that the requirement for an air restart envelope should include restart capability throughout the flight envelope of the rotorcraft. However, this wording could be interpreted to require restart at the extremes of the flight envelope. Neither of these suggestions are justified and, therefore, the proposal is adopted with the editorial change to paragraph (c)(3) as discussed.

Proposal 3–44. The notice proposed to amend paragraph (a) of § 29.908 to require the rotorcraft to have the capability of safe operation, including adequate cooling, following a cooling fan failure. Under the existing rule, fan failure modes could be accepted which may result in hazards to the rotorcraft caused by loss of cooling air to critical powerplant components. The notice also proposed a new paragraph (c) requiring a determination that cooling fans which are not part of the rotor drive system are not subject to fan blade resonant conditions within the operating limits of the rotorcraft. This will ensure that cooling fans which by location or definition may not be included in other fatigue tests or evaluations are evaluated for possible fatigue failure. Finally, the title of this paragraph has been changed from "Failure Evaluation" to "Fatigue Evaluation" to be consistent with the subject material of the paragraph as revised. No comments were received, and this proposal is adopted without change.

Proposal 3–45. The notice proposed a number of amendments to § 29.923. These include editorial changes, additional endurance test criteria for a new continuous OEI rating, and clarification of the torque and r.p.m. relation intended for the various power ratings involved in the tests prescribed by this section.

Paragraph (a)(1) is amended to require the test cycle to be extended beyond 10 hours if OEI rating tests are included in the test program. This change is needed to maintain the cyclic aspect of the test if OEI ratings are included.

Paragraph (a)(3) is amended to include rotational speed as a part of the test because the term "torque" by itself does not adequately define the test.

Paragraph (a)(3)(ii) is amended for clarity.

Paragraphs (b)(2), (f), and (k) are amended to add the test requirements for the new continuous OEI rating and retain, as an alternate, the 30-minute OEI rating tests for those applicants who may request this rating. This change provides a regulatory test basis for qualifying the rotor drive system for optional OEI ratings.

Paragraph (g) is amended to remove the inference that the 2½-minute OEI runs must be repeated if the takeoff run is reconducted. Under these circumstances, additional testing for the 2½-minute rating is unnecessary for safety.

Additional amendments are made to paragraphs (b), (c), (d), (e), (f), (h), and (k) to clarify the provisions with respect to power parameters to ensure that appropriate torque and rotational speeds are used during the tests.

No comments were received on this proposal, and it is adopted without change.

Proposal 3–46. The notice proposed several amendments to § 29.927. Paragraph (c) is changed by revising and extending the rotor drive system lubrication failure test requirements for Category A rotorcraft and by clarifying the corresponding test requirements for Category B rotorcraft. Category A aircraft must have significant continued flight capability after a failure in order to optimize eventual landing opportunities. However, indefinite flight following the lubrication system failure is not expected. The changes to the Category B rotorcraft drive system lubrication failure test requirements are largely for clarification and are not substantive.

A commenter notes that paragraph (c), as proposed, could be interpreted to preclude credit for auxiliary lubrication systems or to require consideration of lubricant failures to self-lubricated bearings. This was not intended, and the wording of paragraphs (c)(1) and (c)(2) has been revised to eliminate this possible ambiguity.

The change to the overspeed test requirements in paragraph (d) removes the arbitrary requirement of 120 percent and substitutes a more realistic one which will relate to the operating characteristics of the rotorcraft. This change is needed because the existing 120 percent overspeed requirement may be unnecessarily severe for some rotorcraft. An additional change eliminates the requirement for accomplishing the acceleration phase of the overspeed tests within 10 seconds when the maximum acceleration rate of the engine requires more time. This will avoid special engine fuel control modifications for test purposes which are unnecessary and may damage the engine.

One commenter suggests that the overspeed tests required by paragraph (d) should be limited to the speed associated with speed and torque limiting devices. The FAA concurs with this comment provided that the speed and torque limiting device is reliable and independent from the normal engine control for rotational speed, and the amendment reflects this concept. The same commenter also suggests that the overspeed tests required in paragraph (d) should be limited to 105 percent of the maximum rotational speed, not considering transients. The FAA does not concur since it is essential that overspeed above the maximum expected transient speed be demonstrated to assure a margin of safety for this condition.

Further change to § 27.927 is made to add a new paragraph (f) which requires each individual test specified by this section to be conducted without intervening disassembly and, except for the lubrication failure tests of paragraph (c), requires each part tested to be in a serviceable condition at the conclusion of the test. Intervening disassembly is

unacceptable since it can invalidate the required serviceability findings. The serviceability requirement is needed to ensure that only test results which are satisfactory may be used to show compliance.

One commenter incorrectly assumes that new paragraph (f) requires all tests under § 29.927 to be conducted in the sequence listed in the section and on the same test specimen. New paragraph (f) is intended to require, in part, the test specified by any selected paragraph, such as the 200 applications of torque specified by paragraph (b)(1) of this section, to be conducted without intervening disassembly on any one specimen of the rotor drive system.

This proposal is adopted with the changes discussed.

Proposal 3–47. For an explanation of new § 29.954, see the explanation for Proposal 3–11. No comments were received on this proposal, and it is adopted without change.

Proposal 3–48. For an explanation and a discussion of the comments related to the proposed changes to § 29.955, see the discussion of Proposal 3–12. As a result of the comments received for Proposal 3–12, corresponding changes have been incorporated into this proposal, and it is adopted with those changes.

Proposal 3–49. The notice proposed an amendment to § 29.961 to simplify and restate the fuel system hot weather qualification requirements. This would eliminate detail requirements in the existing rule which were to some extent redundant or not necessarily critical for some rotorcraft. No comments were received on this proposal. The phrase "including, if applicable, the engine operating conditions defined by §§ 29.927 (b)(1) and (b)(2)" is added in the amendment to be consistent with the corresponding amendment being made to § 27.961 and to ensure that certain critical qualification aspects are properly considered. This change is clarifying in nature and falls within the scope of the notice. The proposal is adopted with only this editorial addition.

Proposal 3–50. For comments related to the proposed revision to paragraph (b) of § 29.963, see the discussion of Proposal 3–14. As indicated in that discussion, the higher load factor requirements for fuel tanks may not be appropriate and, therefore, the proposed change to paragraph (b) is withdrawn.

For an explanation of the proposal to add a new paragraph (e) to § 29.963, see the discussion for Proposal 3–14. No comments were received on this part of the proposal, and it is adopted as proposed.

Proposal 3–51. The notice proposed an amendment to remove paragraph (f) from § 29.967. The requirements of paragraph (f) are adequately covered by § 29.963. No comments were received, and the proposal is adopted without change.

Proposal 3–52. For an explanation of this proposal to amend § 29.969, see the explanation for Proposal 3–15. No comments were received, and the proposal is adopted without change.

Proposal 3–53. The notice proposed to amend § 29.971 to require that fuel tank sump designs be arranged so that drainage to the sump area will occur with the rotorcraft parked in any ground attitude which can reasonably be expected in service. Current § 29.971, which requires only that drainage to the sump be effective with the rotorcraft parked in the "normal" attitude, may not accomplish its intended purpose when rotorcraft are parked on uneven terrain. No comments were received, and the proposal is adopted without change.

Proposal 3–54. For an explanation of this proposal to amend § 29.975, see Proposal 3–17. No comments were received, and the proposal is adopted without change.

Proposal 3–55. For an explanation of this proposal which amends § 29.991, see Proposal 3–18. No comments were received, and the proposal is adopted without change.

Proposal 3–56. The proposal to amend § 29.993 has been withdrawn. For an explanation, see the discussion of Proposal 3–19.

Proposal 3–57. The notice proposed to amend § 29.997 in a manner similar to Proposal 3–20 for § 27.997. For a discussion of the comments received, see Proposal 3–20. The proposal is adopted without substantive change.

Proposal 3–58. For an explanation of this proposal to amend § 29.999, see Proposal 3–21. No comments were received, and the proposal is adopted without change.

Proposal 3–59. The notice proposed to add a new § 29.1001 to set forth certification safety standards for fuel jettisoning systems. While these systems are optional, this new section establishes the minimum safety precautions which designers must consider when choosing to produce systems of this type.

A commenter suggests that demonstration of fuel jettisoning during "emergency descent" should not be required since it is not a condition that can be quantified and is not a normal flight regime. The FAA agrees that a requirement for fuel jettisoning during emergency descent is unnecessary and that flight limitations prescribed for use of the fuel jettisoning system are adequate to ensure safety. Another commenter suggests that jettisoned fuel should be allowed to impinge on certain parts of the rotorcraft if no hazard is involved. Such a finding, if established, should be allowed for credit toward meeting this rule. The rule, as adopted, incorporates both of these changes.

Proposal 3–60. The notice proposed to amend § 29.1011 by revising its title from "General" to "Engines: General," by removing existing paragraph (b), and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively. To be consistent with the restructuring of § 29.1011, this amendment includes an editorial change to redesignated paragraph (d) to remove the words "* * * and rotor drive system * * *." These changes will also coordinate the requirements of this section with new § 29.1027. No comments were received, and except for the deletion noted, the proposal is adopted without change.

Proposal 3–61. For an explanation of this proposal to amend § 29.1019, see the explanation for Proposal 3–23. No comments were received, and the proposal is adopted without change.

Proposal 3–62. The notice proposed to add a new § 29.1027, "Transmissions and Gearboxes: General," which contains the requirements removed from § 29.1011 by Proposal 3–60 plus additional lubrication system requirements appropriate for transmissions and gearboxes. These requirements are derived from existing engine oil system requirements which have been adjusted or modified to suit the needs of transmissions and gearboxes.

A commenter suggests that paragraph (b) should apply only to oil systems which employ separate tanks and not to systems which employ gearbox sump type oil reservoirs. In response to the comment, the FAA has determined that the relevant oil system requirements are those relating to strength, including pressure tests, lines and fittings, vent arrangements, drains, vibration, and fire protection and that these requirements are valid for pressure lubrication systems regardless of the oil storage configuration. Nonpressurized splash lubrication arrangements are usually free from the problems of pressurized systems and, therefore, should be exempt from the detail requirements addressed above. This commenter's suggestion is, therefore, not incorporated.

A second commenter suggests that paragraph (b) of the proposal is confusing and should be clarified to ensure proper application. The FAA

concurs and, accordingly, has made several changes to identify specifically the pertinent parts of other oil system rules referenced in this proposal as well as to remove apparent redundancies.

The third commenter suggests that paragraph (b)(2) should be revised to require a coarse mesh screen in the scavenge to the oil pump rather than the tank or sump outlet screen specified by the proposal. The FAA does not concur since this would, in effect, remove the protection a tank outlet screen provides from trash, paper, or other objects which might enter the system via the tank filler opening.

The proposal is adopted with the changes discussed.

Proposal 3–63. The notice proposed to amend § 29.1041 to revise paragraph (a) to include the phrase "for which certification is requested." This change is needed to clarify and identify the range of operating conditions for which powerplant cooling provisions must be effective. In addition, the notice proposed to amend paragraph (c) to exempt ground-use-only auxiliary power units from the requirement for in-flight cooling tests. No comments were received, and the proposal is adopted without change.

Proposal 3–64. The notice proposed to add a new paragraph (a)(5) to § 29.1043 which includes a definition of "stabilization" as it pertains to powerplant systems cooling tests. This will define more clearly the extent of cooling tests and eliminate prolonged and unnecessary extension of cooling tests which may be interpreted as required if test parameters continue to change slightly during the cooling test. No comments were received and this proposal is adopted without change.

Proposal 3–65. The notice proposed to revise paragraph (c) of § 29.1045 to include requirements for the OEI en route climb cooling tests applicable to the new "continuous OEI" rating introduced in this rulemaking. The existing OEI en route climb cooling test requirements are not adequate to ensure proper evaluation of powerplant cooling parameters during operation at this power rating. No comments were received, and this proposal is adopted without change.

Proposal 3–66. The notice proposed to revise paragraph (a) of § 29.1047 to include requirements for the OEI takeoff/climb cooling tests applicable to the new "continuous OEI" rating for reasons similar to those in Proposal 3–65. No comments were received, and this proposal is adopted without change.

Proposal 3–67. The notice proposed to restate paragraph (b)(1) of § 29.1093 so that the phrase "within the limitations established for the rotorcraft" applies only to the requirement in paragraph (b)(1)(ii) for demonstrating flight in falling and blowing snow. For an explanation of this proposal and a discussion of the comments received from the public, see Proposal 3–28.

The notice also proposed to change the reference in paragraph (b) from Appendix C of Part 25 to Appendix C of Part 29 to correlate the airframe icing requirements of § 29.1419 to the powerplant icing requirements of this section. These appendices are identical.

The proposal is adopted without change.

Proposal 3–68. For an explanation of this proposal to amend § 29.1141, see the discussion for Proposal 3–29. No comments were received, and this proposal is adopted without change.

Proposal 3–69. The notice proposed to amend paragraphs (a) through (e) of § 29.1143 to replace the terms "throttle control" and "thrust control" with the more general term "power control." For an explanation of these changes, see the discussion for Proposal 3–30. No comments were received, and this proposal is adopted without change.

Proposal 3–70. The notice proposed to amend paragraph (d) of § 29.1163 to rephrase the design requirement for accessory drive torque limiting devices so that the torque limiting device may be included in either the accessory or the rotor drive system. For an explanation of this proposal, see the discussion for Proposal 3–31. No comments were received, and the proposal is adopted without change.

Proposal 3–71. The notice proposed to add a new paragraph (b) to § 29.1181. Paragraph (b) reinstates a requirement pertaining to powerplant fire zones which was inadvertently dropped by Amendment 29–3 (33 FR 956; January 26, 1968). Paragraph (b) requires that fire zones, as defined in this section, must be protected from powerplant fires in accordance with specific protective systems defined in other associated rules in the Part. No comments were received on this proposal, and it is adopted without change.

Proposal 3–72. The notice proposed to amend paragraph (e) of § 29.1189 to require flammable fluid shutoff devices and controls for these devices to be designed, located, and protected to function properly under conditions likely to result from a critical powerplant area fire. This change is needed to preclude approval of design arrangements wherein heat from an engine compartment fire is conducted through the firewall to the extent that it jeopardizes the operation of these shutoff devices.

The notice also proposed to amend paragraph (f) to exempt ground-use-only auxiliary power unit shutoff devices from the requirement for a guarded control. This eliminates the need for a design feature when no flight or ground safety objective is involved.

No comments were received, and this proposal is adopted without change.

Proposal 3–73. This proposal adds a new paragraph (f) to § 29.1193 which would, in effect, require redundant retention means for each openable or readily removable panel, cowling, engine, or rotor drive system covering. For an explanation of this proposal and the comment received, see the discussion for Proposal 3–33. This proposal is adopted without change.

Proposal 3–74. The notice proposed to revise, edit, and add new powerplant instrument requirements to § 29.1305.

For a discussion of the revisions to paragraphs (a)(4), (a)(17), and (a)(19), see Proposal 3–34.

New paragraph (a)(20) combines into one rule, without substantative change, the existing identical requirements for fuel pressure indicators currently contained in paragraphs (b)(2) and (c)(2) of this section and further modifies the applicability of this requirement to only those fuel systems with devices or components which, in the event of failure, could adversely affect fuel pressure at the engine. These changes are needed to simplify the presentation in this section for fuel pressure indicators and to eliminate the requirement for fuel pressure indicators in fuel systems such as suction or gravity feed systems which do not incorporate pumps, filters, etc., subject to deterioration which could be reflected on a fuel pressure indicator.

New paragraph (a)(21) requires a warning device to indicate the failure of any fuel pump required for adequate fuel flow to the engine. This alerts the flightcrew that fuel flow and engine operation are now dependent on the emergency system and to institute precautionary operating procedures.

New paragraph (a)(22) adds a requirement for a warning or caution device to alert the flightcrew when particles are detected by the chip detector required by new § 29.1337(d) proposed as another amendment to this part. This amendment is one of a two-part amendment to require chip detectors and associated warning signals to alert the crew to possible impending failures in rotorcraft transmissions and gearboxes. These devices have been found to be a relatively inexpensive method of

significantly improving the safety of rotorcraft in these respects.

New paragraph (a)(23) adds a requirement for powerplant instruments or warning devices for auxiliary power units installed in rotorcraft. This ensures that flightcrews will have indicators or warning devices needed to avoid possible unsafe conditions which may be expected during operation of auxiliary power units.

Additional editorial changes to existing paragraphs (b)(2) and (c)(2) have been added to integrate new paragraph (a)(20) with these other provisions.

No comments were received, and this proposal is adopted without change.

Proposal 3–75. The notice proposed to amend § 29.1337 to add a new paragraph (e) to require certain rotor drive system transmissions and gearboxes to be equipped with chip detector systems which detect and signal the presence of ferromagnetic particles to the flightcrew. Also, the amendment requires a means to permit crewmembers to check, in flight, the function of each detector's electrical circuit and signal. Because not all chips generated in a transmission or gearbox will be detected by these magnetic detectors, the amendment does not include extensive performance requirements for these systems. However, these devices have been found to be a relatively inexpensive and effective method of detecting impending mechanical failures in gearboxes. This amendment will improve the level of safety available with the installation of chip detector systems.

A commenter notes that in Proposal 3–35 (§ 27.1337), chip detectors would be required for "rotor drive system transmissions and gearboxes," whereas in this proposal, affecting Part 29, chip detectors would be required only for "transmission gearboxes." This inconsistency between the two parts is not intended and paragraph (e) is changed to agree with the amendment to § 27.1337(c). This commenter also suggests removal of the phrase "when ferromagnetic particles exist in the vicinity of the detector." The FAA agrees that these words are unnecessary, and this phrase has been removed.

Accordingly, this proposal is adopted with the changes discussed.

Proposal 3–76. The notice proposed to revise paragraphs (f) and (g) and add a new paragraph (h) to § 29.1521. The changes to paragraphs (f) and (g) introduce the term "OEI" to emphasize and clarify the limitations on the use of the 2½-minute and 30-minute power ratings as defined in this section. This amendment also correlates the title of these ratings to their definitions in Part 1, as revised by this amendment. Additionally, these changes add the introductory phrase "unless otherwise authorized," in order to authorize use of these ratings when appropriate, additional qualification testing or other adequate safety measures have been instituted. Also, both paragraphs (f) and (g) have been reworded to set forth specifically the limitations on the use of these ratings. These changes are intended to assist the public in avoiding misconceptions regarding the eligibility of these ratings.

New paragraph (h) establishes and defines a new continuous OEI power rating using terminology similar to that developed by this amendment for the 2½-minute and 30-minute power ratings. This change ensures proper recognition in the powerplant limitations listing required by § 29.1583.

No comments were received on this proposal; however, it was subsequently noted that the proposed wording would preclude use of the 2½-minute OEI power rating to achieve a safe one-engine-inoperative climbout after a balked landing or to avoid the hazardous zones of the HV diagram if the associated engine failure occurred in conjunction with flight conditions which dictate use of this power. This was not intended or justified and this section, as adopted, clarifies this aspect.

Proposal 3–77. The notice proposed to add a new paragraph (e) and make associated editorial changes to § 29.1549 to set forth requirements for powerplant instrument markings applicable to the OEI ratings eligible on certain rotorcraft. For an explanation of this proposal and its disposition, see the explanation for Proposal 3–37.

Proposal 3–78. The notice proposed to revise paragraph (c)(1)(iii) of § 29.1557 to permit, for turbine-powered rotorcraft, the use of flight manual listings of approved fuels in lieu of decals and placards at the fuel filler openings, as required by the existing rule. The listing of approved fuels is, in some instances, too extensive to include on decals or placards in the space available. No comments were received, and the proposal is adopted without change.

Proposal 3–79. The notice proposed to revise paragraph (c) of § 33.7 to add to the list of ratings and limitations the new "continuous OEI power" rating discussed in Proposal 3–3. This amendment will ensure recognition and correlation of this new rating to Part 33 test requirements. Paragraphs (c)(1)(v) and (c)(1)(vi) have been revised in the amendment by adding the term "OEI" to the phrases "rated 30-minute power" and "rated 2½-minute power" to be consistent with the addition of this term to other appropriate sections of this part. No comments were received, and this proposal is adopted with the editorial changes noted.

Proposal 3–80. The notice proposed to amend § 33.87 as follows:

Paragraphs (a) and (b) are revised to include reference to the test run necessary to qualify rotorcraft engines for the new continuous OEI rating consistent with amendments to other sections of this subpart. Additionally, paragraph (b)(2) is restated for clarification, without substantive change.

Paragraph (d) is revised and redesignated as paragraph (e) and a new paragraph (d) is added to prescribe the test requirements for the new continuous OEI rating.

Newly redesignated paragraph (e), pertaining to the 2½-minute OEI rating, is revised to incorporate the option of combining this rating with the conventional takeoff and maximum continuous power ratings or with either of the en route OEI ratings. The reference in the last sentence of (e)(1) is changed from (c)(5) to (d)(6) for consistency in paragraph numbering.

The word "rotorcraft" is substituted for "helicopter" throughout § 33.87 to be consistent with the broader installation applications of turboshaft engines. The term "OEI" is added to existing "30-minute power" and "2½-minute power" phrases used in paragraphs (c), new (d), and (e). In addition, the words "and thrust" are removed from the phrase "power and thrust" in paragraphs (c), (d), and (e) since rotorcraft engines are not normally thrust-rated.

These changes coordinate the test requirements related to the new continuous OEI power rating and eliminate unnecessarily restrictive requirements for qualification for the 2½-minute OEI power rating.

A commenter expresses concern that the proposed block test schedule for the continuous OEI power rating differs unnecessarily from the block test schedule prescribed for engines by the Joint Airworthiness Requirements (JAR) for the similarly used intermediate contingency power rating. The commenter indicates that these differences exist in the maximum continuous power run and the incremental power run and recommends a 12½-hour increase in incremental power running at the expense of time spent testing at maximum continuous power. The FAA disagrees. In this proposal, the time of testing at incremental power for the continuous OEI power rating is the same (50 hours)

as that which has been found satisfactory for the 30-minute OEI power rating. The redistribution of test time at maximum continuous power and above is introduced to account for the fact that the continuous OEI power rating is not time limited (as is the 30-minute OEI power rating) and thus, should have a proportionate amount of associated qualification test time.

The same commenter notes that in the **Federal Register** publication of the NPRM, the sentence, "For engines tested under paragraph (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation," was inadvertently omitted from § 33.87(a). The same commenter also notes that in the **Federal Register** publication, the title line of proposed § 33.87(c) should have read "* * * for which a 30-minute OEI power * * *."; and that the word "hour" was omitted from the first sentence of proposed § 33.87(e)(1). These changes with corrected wording have been made in the amendment.

This commenter finally notes that Amendment 33–10 (49 FR 6852; February 23, 1984) added 5 minutes to the endurance test requirements of § 33.87(d) for certification of the 2½-minute OEI rating. He contends this further jeopardizes the uniformity of requirements between the FAR and the JAR. This change to Part 33 was introduced as part of the Engine Regulatory Review Program, NPRM No. 80–21, Docket No. 16919, and became effective in February 1984. This comment is, therefore, beyond the scope of the notice and cannot be considered in this rulemaking.

This proposal is adopted with the changes discussed.

Economic Summary

A regulatory evaluation of the amendments published herein has been prepared and filed in the docket. This evaluation addresses the pertinent requirements of the Regulatory Flexibility Act of 1980, Executive Order 12291, Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and the impact on international trade. A summary of this evaluation follows.

Seventy of the amendments reflect current rotorcraft industry practice or clarify existing rules and, therefore, impose negligible or no additional costs and in some cases will result in savings. Amendments in this category are listed in Table 1.

A second group of 12 amendments, listed in Table II, pertain to safety standards for optional equipment or to new optional rotorcraft powerplant operating limitations. The FAA assumes that since these equipment items and powerplant ratings are optional, they will only be introduced into any model rotorcraft if the manufacturer of that rotorcraft determines that the benefits of such action will exceed the costs. One option that may result in an economic benefit is the introduction of a new continuous one-engine-inoperative rating which will permit rotorcraft manufacturers to qualify certain rotorcraft to perform long-range missions at gross weights approaching those now associated with use of the existing 30-minute OEI rating. Corresponding improvements in productivity should also be expected.

A third group of proposals listed in Table III was identified as having significant cost impact. For these proposals, the FAA's analysis of the costs and benefits failed to show that the imposition of these proposals was justified. These proposals were not included in the final rule and are being deferred for further study. They may appear in subsequent notices if they are found to be warranted.

TABLE I.—RULE CHANGES WITH ZERO OR NEGLIGIBLE COMPLIANCE COSTS

Item No.	FAR Section	Subject	Evaluation
2	1.1	30-minute rating	Definition.
3	1.2	Definition	Definition.
6	27.361(a)	Design torque limitations	Current practice.
7	27.833	Combustion heaters	Current practice.
8	27.859(c) thru (k)	Combustion heaters	Current practice.
9	27.901	Powerplant installation	Current practice.
10	27.903(a), (b)	Powerplant cooling fans	Negligible cost.
11	27.923(c), (d), (e), (j), (k)	Drive system tests	Negligible cost.
12	27.927(b)	Drive systems	Clarification.
13	27.954	Fuel system lightning protection	Current practice.
14	27.955	Fuel flow requirements	Current practice.
15	27.961	Fuel system hot weather tests	Current practice.
16	27.963(e), (f)	Fuel tank safety	Current practice.
17	27.969	Fuel expansion space	Negligible savings.
18	27.971	Fuel tank sump	Negligible cost.
19	27.975	Fuel tank vent arrangement	Current practice.
20	27.991	Fuel pump	Current practice.
21	27.997	Fuel strainer	Current practice.
22	27.999	Fuel system drains	Current practice.
23	27.1011	Engine oil systems	Clarification.
24	27.1019	Oil strainer contamination indicator	Negligible savings.
25	27.1027	Transmission oil systems	Current practice.
26	27.1041	Powerplant cooling	Current practice.
27	27.1045	Powerplant cooling	Clarification.
28	27.1091	Engine induction system	Negligible savings.
29	27.1093	Engine ice and snow protection	Negligible savings.
30	27.1141	Powerplant valves	Current practice.
31	27.1143	Engine controls	Clarification.
32	27.1163	Powerplant accessories	Negligible savings.
33	27.1189	Flammable fluid shutoff valves	Current practice.
34	27.1193	Cowling retention	Current practice.

TABLE I.—RULE CHANGES WITH ZERO OR NEGLIGIBLE COMPLIANCE COSTS—Continued

Item No.	FAR Section	Subject	Evaluation
35	27.1305(l), (m), (q), (s)	Powerplant instruments	Negligible savings.
36	27.1337	Magnetic chip detectors	Negligible cost.
37	27.1521(g), (h)	Powerplant limitations	Clarification.
38	27.1549(e)	Powerplant instrument markings	Current practice.
41	29.361(a), (b)	Design torque limitations	Negligible cost.
42	29.549(e)	Fuselage structural loads	Clarification.
43	29.901(b)(2), (b)(6)	Powerplant installation	Negligible cost.
44	29.903(a), (b)(2), (c)(3)	Powerplant installation	Clarification.
45	29.908(a), (c)	Powerplant cooling fans	Negligible cost.
46	29.923(a) thru (h), (k)(l)	Drive system tests	Clarification.
47	29.927(c), (d), (f)	Drive system tests	Clarification.
48	29.954	Fuel system lightning protection	Current practice.
49	29.955	Fuel flow requirements	Current practice.
50	29.961	Fuel system hot weather tests	Current practice.
51	29.963(e)	Fuel tank safety	Negligible cost.
52	29.967(f)	Fuel tank installation requirements	Clarification.
53	29.969	Fuel expansion space arrangements	Negligible savings.
54	29.971	Fuel tank sump	Current practice.
55	29.975	Fuel tank vent arrangements	Current practice.
56	29.991	Fuel pumps	Current practice.
57	29.997	Fuel strainer	Current practice.
58	29.999	Fuel system drains	Current practice.
60	29.1011	Engine oil systems	Clarification.
61	29.1019(a)	Oil strainer contamination indicator	Negligible savings.
62	29.1027	Transmission oil systems	Negligible savings.
63	29.1041	Powerplant cooling	Clarification.
64	29.1043	Powerplant cooling	Clarification.
67	29.1093	Engine ice and snow protection	Negligible savings.
68	29.1141	Powerplant valves	Current practice.
69	29.1143	Engine controls	Clarification.
70	29.1163	Powerplant accessories	Current practice.
71	29.1181	Designated fire zones	Definition.
72	29.1189(e), (f)	Flammable fluid shutoffs	Current practice.
73	29.1193(f)	Powerplant cowling retention	Negligible cost.
74	29.1305(a)(4), (a)(17), (a)(19) thru (a)(23), (b)(2), (c)(1) and (c)(2).	Powerplant instruments	Negligible cost.
75	29.1337(e)	Magnetic chip detectors	Negligible cost.
76	29.1521(f), (g)	Powerplant limitations	No cost.
77	29.1549(e)	Powerplant instrument markings	Current practice.
78	29.1557(c)	Markings and placards	Negligible cost.

TABLE II.—RULE CHANGES FOR OPTIONAL RATINGS OR EQUIPMENT

Item No.	FAR Section	Subject
5	27.67(a)(2), (a)(3), (b).	Continuous OEI power.
11	27.923(d), (e), (j), (k).	Continuous OEI power.
16	27.963(g)	Cabin fuel tanks
37	27.1521(i)	Continuous OEI power.
40	29.67(a)(2), (a)(3), (b).	Continuous OEI power.
45	29.923(k)(2)	Continuous OEI power.
59	29.1001	Fuel jettisoning system.
65	29.1045(a)(4), (c)	Continuous OEI power.
66	29.1047(a)	Continuous OEI power.
76	29.1521(h)	Continuous OEI power.
80	33.7(c)	Continuous OEI power.
81	33.87(d)	Continuous OEI power.

TABLE III.—PROPOSALS DEFERRED FOR FURTHER STUDY

Proposal No.[1]	FAR Section	Subject
103	27.964	Fuel cell crashworthiness.
284	29.903	Engine rotor containment.
303	29.927	Overrunning clutch test.
316	29.964	Fuel cell crashworthiness.
358	29.1305	Engine failure warning.

[1] Numbering corresponds with proposal as presented to the New Orleans Rotorcraft Regulatory Review Conference, December 1979.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules which may have a "significant economic impact" on a substantial number of small entities.

Within the context of these amendments, the FAA definition of a small entity is a small rotorcraft manufacturer with less than 75 employees. Under these "small entity" size standard criteria, only three of eleven helicopter manufacturers in business today is a small entity.

The FAA estimates that there will be six new helicopters certificated before the year 2000. Three are expected to be Part 27 helicopters and three Part 29 helicopters. The three new Part 29 helicopters are expected to be certificated by three of eight large firms. Of the three new Part 27 helicopters, two are expected to be certificated by large firms and one by a small firm.

Clearly, the final rule changes will not impact a substantial number of small entities.

Trade Impact Analysis

This section discusses the impact of these amendments on the sale of foreign rotorcraft in the United States and the sale of U.S. rotorcraft in foreign countries.

Since the certification rules are applicable to both foreign and domestic entities which manufacture rotorcraft to sell in the United States, there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certify their rotorcraft to U.S. rules and, therefore, U.S. manufacturers would not suffer a disadvantage in foreign markets.

Those amendments which reduce the life cycle cost of rotorcraft should aid in developing increased sales in the United States since it can be expected that a decrease in price should stimulate sales. Because many foreign countries follow U.S. certification rules, foreign sales by U.S. manufacturers should also increase.

Federalism Implications

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 regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

In the context of these analyses, it is concluded that this rule is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, based on the findings made with respect to the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 1

Airmen, Flights, Aircraft pilots, Pilots, Air safety, Safety, Air transportation, Air carriers, Aircraft, Helicopters, Rotorcraft.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 33

Engines, Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Parts 1, 27, 29, and 33 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 33) are amended as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 1.1 by adding the definition of "Rated continuous OEI power" after the definition of "Public aircraft," and by removing the definitions "Rated '30-minute power' " and "Rated '2½-minute power' " and substituting in place thereof the definitions of "Rated 30-minute OEI power" and "Rated 2½-minute OEI power."

§ 1.1 General definitions.

* * * * *

"Rated continuous OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to the time required to complete the flight after the failure of one engine of a multiengine rotorcraft.

* * * * *

"Rated 30-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to a period of not more than 30 minutes after the failure of one engine of a multiengine rotorcraft.

"Rated 2½-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 of this chapter, and limited in use to a period of not more than 2½ minutes after the failure of one engine of a multiengine rotorcraft.

* * * * *

3. By amending § 1.2 by adding the definition of "OEI" after the definition of "NOPT" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"OEI" means one engine inoperative.

* * * * *

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

4. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

5. By amending § 27.67 by removing paragraph (c) and by revising paragraph (b) to read as follows:

§ 27.67 Climb: One engine inoperative.

* * * * *

(b) The critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and, for helicopters for which certification for the use of 30-minute OEI power is requested, at 30-minute OEI power; or

(2) Continuous OEI power for helicopters for which certification for the use of continuous OEI power is requested.

6. By revising § 27.361 to read as follows:

§ 27.361 Engine torque.

(a) For turbine engines, the limit torque may not be less than the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 27.923;

(3) The torque required by § 27.927; or

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(b) For reciprocating engines, the limit torque may not be less than the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

7. By adding a new § 27.833 following § 27.831 and before the heading, Fire Protection, to read as follows:

§ 27.833 Heaters.

Each combustion heater must be approved.

8. By amending § 27.859 by revising paragraph (c) and by adding new

paragraphs (d) through (k) to read as follows:

§ 27.859 Heating systems.

* * * * *

(c) *Combustion heater fire protection.* Except for heaters which incorporate designs to prevent hazards in the event of fuel leakage in the heater fuel system, fire within the ventilating air passage, or any other heater malfunction, each heater zone must incorporate the fire protection features of the applicable requirements of §§ 27.1183, 27.1185, 27.1189, 27.1191, and be provided with—

(1) Approved, quick-acting fire detectors in numbers and locations ensuring prompt detection of fire in the heater region.

(2) Fire extinguisher systems that provide at least one adequate discharge to all areas of the heater region.

(3) Complete drainage of each part of each zone to minimize the hazards resulting from failure or malfunction of any component containing flammable fluids. The drainage means must be—

(i) Effective under conditions expected to prevail when drainage is needed; and

(ii) Arranged so that no discharged fluid will cause an additional fire hazard.

(4) Ventilation, arranged so that no discharged vapors will cause an additional fire hazard.

(d) *Ventilating air ducts.* Each ventilating air duct passing through any heater region must be fireproof.

(1) Unless isolation is provided by fireproof valves or by equally effective means, the ventilating air duct downstream of each heater must be fireproof for a distance great enough to ensure that any fire originating in the heater can be contained in the duct.

(2) Each part of any ventilating duct passing through any region having a flammable fluid system must be so constructed or isolated from that system that the malfunctioning of any component of that system cannot introduce flammable fluids or vapors into the ventilating airstream.

(e) *Combustion air ducts.* Each combustion air duct must be fireproof for a distance great enough to prevent damage from backfiring or reverse flame propagation.

(1) No combustion air duct may connect with the ventilating airstream unless flames from backfires or reverse burning cannot enter the ventilating airstream under any operating condition, including reverse flow or malfunction of the heater or its associated components.

(2) No combustion air duct may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(f) *Heater control: General.* There must be means to prevent the hazardous accumulation of water or ice on or in any heater control component, control system tubing, or safety control.

(g) *Heater safety controls.* For each combustion heater, safety control means must be provided as follows:

(1) Means independent of the components provided for the normal continuous control of air temperature, airflow, and fuel flow must be provided for each heater to automatically shut off the ignition and fuel supply of that heater at a point remote from that heater when any of the following occurs:

(i) The heat exchanger temperature exceeds safe limits.

(ii) The ventilating air temperature exceeds safe limits.

(iii) The combustion airflow becomes inadequate for safe operation.

(iv) The ventilating airflow becomes inadequate for safe operation.

(2) The means of complying with paragraph (g)(1) of this section for any individual heater must—

(i) Be independent of components serving any other heater, the heat output of which is essential for safe operation; and

(ii) Keep the heater off until restarted by the crew.

(3) There must be means to warn the crew when any heater, the heat output of which is essential for safe operation, has been shut off by the automatic means prescribed in paragraph (g)(1) of this section.

(h) *Air intakes.* Each combustion and ventilating air intake must be located so that no flammable fluids or vapors can enter the heater system—

(1) During normal operation; or

(2) As a result of the malfunction of any other component.

(i) *Heater exhaust.* Each heater exhaust system must meet the requirements of §§ 27.1121 and 27.1123.

(1) Each exhaust shroud must be sealed so that no flammable fluids or hazardous quantities of vapors can reach the exhaust system through joints.

(2) No exhaust system may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(j) *Heater fuel systems.* Each heater fuel system must meet the powerplant fuel system requirements affecting safe heater operation. Each heater fuel system component in the ventilating airstream must be protected by shrouds so that no leakage from those components can enter the ventilating airstream.

(k) *Drains.* There must be means for safe drainage of any fuel that might accumulate in the combustion chamber or the heat exchanger.

(1) Each part of any drain that operates at high temperatures must be protected in the same manner as heater exhausts.

(2) Each drain must be protected against hazardous ice accumulation under any operating condition.

9. By amending § 27.901 by revising paragraph (b)(1); by removing the word "and" after the semicolon in (b)(2); by removing the period at the end of (b)(3) and inserting a semicolon in its place; by removing the period at the end of (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 27.901 Installation.

* * * * *

(b) * * *

(1) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested;

* * * * *

(5) Design precautions must be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * *

10. By amending § 27.903 by revising paragraphs (a) and (b) to read as follows:

§ 27.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) of this chapter or be otherwise approved for the intended usage.

(b) *Engine or drive system cooling fan blade protection.* (1) If an engine or rotor drive system cooling fan is installed, there must be a means to protect the rotorcraft and allow a safe landing if a fan blade fails. This must be shown by showing that—

(i) The fan blades are contained in case of failure;

(ii) Each fan is located so that a failure will not jeopardize safety; or

(iii) Each fan blade can withstand an ultimate load of 1.5 times the centrifugal force resulting from operation limited by the following:

(A) For fans driven directly by the engine—

(1) The terminal engine r.p.m. under uncontrolled conditions; or

(2) An overspeed limiting device.

(B) For fans driven by the rotor drive system, the maximum rotor drive system rotational speed to be expected in service, including transients.

(2) Unless a fatigue evaluation under § 27.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

* * * * *

11. By amending § 27.923 by revising paragraphs (c), (d), (e), and (j) and by adding new paragraph (k) to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * *

(c) A 60-hour part of the test prescribed in paragraph (b) of this section must be run at not less than maximum continuous torque and the maximum speed for use with maximum continuous torque. In this test, the main rotor controls must be set in the position that will give maximum longitudinal cyclic pitch change to simulate forward flight. The auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(d) A 30-hour or, for rotorcraft for which the use of either 30-minute OEI power or continuous OEI power is requested, a 25-hour part of the test prescribed in paragraph (b) of this section must be run at not less than 75 percent of maximum continuous torque and the minimum speed for use with 75 percent of maximum continuous torque. The main and auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(e) A 10-hour part of the test prescribed in paragraph (b) of this section must be run at not less than takeoff torque and the maximum speed for use with takeoff torque. The main and auxiliary rotor controls must be in the normal position for vertical ascent. For multiengine helicopters for which the use of 2½-minute OEI power is requested, 12 runs during the 10-hour test must be conducted as follows:

(1) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(2) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

* * * * *

(j) For multiengine rotorcraft for which the use of 30-minute OEI power is requested, five runs must be made at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 30-minute period.

(k) For multiengine rotorcraft for which the use of continuous OEI power is requested, five runs must be made at continuous OEI torque and the maximum speed for use with continuous OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 1-hour period.

12. By amending § 27.927 by revising paragraph (b)(3) to read as follows:

§ 27.927 Additional tests.

* * * * *

(b) * * *

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft at the maximum rotational speed intended for the power condition of the test and the torque must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

* * * * *

13. By adding a new § 27.954 to read as follows:

§ 27.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; or

(c) Corona and streamering at fuel vent outlets.

14. By revising § 27.955 to read as follows:

§ 27.955 Fuel flow.

(a) *General.* The fuel system for each engine must be shown to provide the engine with at least 100 percent of the fuel required under each operating and maneuvering condition to be approved for the rotorcraft including, as applicable, the fuel required to operate the engine(s) under the test conditions required by § 27.927. Unless equivalent methods are used, compliance must be shown by test during which the following provisions are met except that combinations of conditions which are shown to be improbable need not be considered.

(1) The fuel pressure, corrected for critical accelerations, must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 27.959, plus the minimum additional fuel necessary to conduct the test.

(3) The fuel head between the tank outlet and the engine inlet must be critical with respect to rotorcraft flight attitudes.

(4) The critical fuel pump (for pump-fed systems) is installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from pump failure.

(5) Critical values of engine rotation speed, electrical power, or other sources of fuel pump motive power must be applied.

(6) Critical values of fuel properties which adversely affect fuel flow must be applied.

(7) The fuel filter required by § 27.997 must be blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 27.1305(q).

(b) *Fuel transfer systems.* If normal operation of the fuel system requires fuel to be transferred to an engine feed tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the engine feed tank within acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel systems must, in addition to having appropriate manual switching capability, be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to the engine alone contains usable fuel.

15. By revising § 27.961 to read as follows:

§ 27.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems with features conducive to vapor formation must be shown by test to operate satisfactorily (within certification limits) when using fuel at a temperature of 110 °F under critical operating conditions including, if applicable, the engine operating conditions defined by §§ 27.927 (b)(1) and (b)(2).

16. By amending § 27.963 by adding new paragraphs (e) and (f) to read as follows:

§ 27.963 Fuel tanks: General.

* * * * *

(e) The maximum exposed surface temperature of any component in the fuel tank must be less, by a safe margin as determined by the Administrator, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all failure or malfunction conditions of all components inside the tank.

(f) Each fuel tank installed in personnel compartments must be isolated by fume-proof and fuel-proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosure must provide necessary protection for the tank and be adequate to withstand loads and abrasions to be expected in personnel compartments.

17. By revising § 27.969 to read as follows:

§ 27.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

18. By revising § 27.971 to read as follows:

§ 27.971 Fuel tank sump.

(a) Each fuel tank must have a drainable sump with an effective capacity in any ground attitude to be expected in service of 0.25 percent of the tank capacity or 1/16 gallon, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity of 1 ounce for every 20 gallons of fuel tank capacity; and

(2) Each fuel tank drain is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of § 27.999(b).

19. By amending § 27.975 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operation unless such an event is extremely remote.

20. By revising § 27.991 to read as follows:

§ 27.991 Fuel pumps.

Compliance with § 27.955 may not be jeopardized by failure of—

(a) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(b) Any component required for pump operation except, for engine driven pumps, the engine served by that pump.

21. By amending § 27.997 by revising the introductory text and paragraph (d) to read as follows:

§ 27.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including but not limited to the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft fuel system or engine fuel system operation.

22. By amending § 27.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 27.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to assure positive closure in the off position; and

* * * * *

23. By revising the title of § 27.1011 to read as follows:

§ 27.1011 Engines: General.

* * * * *

24. By amending § 27.1019 by revising paragraph (a)(3) to read as follows:

§ 27.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

25. By adding a new § 27.1027 after § 27.1021 and before the heading Cooling to read as follows:

§ 27.1027 Transmissions and gearboxes: General.

(a) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 27.1013 (except paragraph (c)), 27.1015, 27.1017, 27.1021, and 27.1337(d).

(b) Each pressure lubrication system must have an oil strainer or filter through which all of the lubricant flows and must—

(1) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree;

(2) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass required by paragraph (b)(3) of this section; and

(3) Be equipped with a bypass constructed and installed so that—

(i) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(ii) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath.

(c) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen must be provided to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b) of this section. The requirements of paragraph (b) do not apply to screens installed at lubricant tank or sump outlets.

(d) Splash-type lubrication systems for rotor drive system gearboxes must comply with §§ 27.1021 and 27.1337(d).

26. By amending § 27.1041 by revising paragraph (a) to read as follows:

§ 27.1041 General.

(a) Each powerplant cooling system must be able to maintain the temperatures of powerplant components within the limits established for these components under critical surface (ground or water) and flight operating conditions for which certification is required and after normal shutdown. Powerplant components to be

considered include but may not be limited to engines, rotor drive system components, auxiliary power units, and the cooling or lubricating fluids used with these components.

* * * * *

27. By amending § 27.1045 by revising paragraph (c)(1) to read as follows:

§ 27.1045 Cooling test procedures.

* * * * *

(c) * * *

(1) The temperatures stabilize or 5 minutes after the occurrence of the highest temperature recorded, as appropriate to the test condition;

* * * * *

§ 27.1091 [Amended]

28. By amending § 27.1091 by removing paragraph (d) in its entirety and by redesignating paragraph (e) as paragraph (d).

29. By amending § 27.1093 by revising paragraph (b)(1) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(b) * * *

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of Part 29 of this chapter; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

30. By amending § 27.1141 by revising the introductory text of paragraph (c) to read as follows:

§ 27.1141 Powerplant controls: General.

* * * * *

(c) Controls of powerplant valves required for safety must have—

* * * * *

31. By amending § 27.1143 by revising paragraphs (a) and (c) and the introductory texts of paragraphs (b) and (d) to read as follows:

§ 27.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be grouped and arranged to allow—

* * * * *

(c) Each power control must provide a positive and immediately responsive means of controlling its engine.

(d) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

* * * * *

32. By amending § 27.1163 by revising paragraph (b) to read as follows:

§ 27.1163 Powerplant accessories.

* * * * *

(b) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

33. By amending § 27.1189 by revising paragraph (c) to read as follows:

§ 27.1189 Shutoff means.

* * * * *

(c) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from an engine fire.

34. By amending § 27.1193 by adding a new paragraph (f) to read as follows:

§ 27.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retaining each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of structural or mechanical failure of the normal retention means, unless such failure is extremely improbable.

35. By amending § 27.1305 by revising paragraphs (l), (m), (q), and (s) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(l) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(1) Provide a warning to the flightcrew when approximately 10 minutes of usable fuel remains in the tank; and

(2) Be independent of the normal fuel quantity indicating system.

(m) Means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 27.955.

* * * * *

(q) An indicator for the fuel filter required by § 27.997 to indicate the occurrence of contamination of the filter at the degree established by the applicant in compliance with § 27.955.

* * * * *

(s) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components.

36. By amending § 27.1337 by adding a new paragraph (e) to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip detectors designed to indicate or reveal the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors must—

(1) Incorporate means to indicate the accumulation of ferromagnetic particles on the magnetic poles; or

(2) Be readily removable for inspection of the magnetic poles for metallic chips. Means must be provided to prevent loss of lubricant in the event of failure of the retention device for removable chip detector components.

37. By amending § 27.1521 by adding new paragraphs (g), (h), and (i) to read as follows:

§ 27.1521 Powerplant limitations.

* * * * *

(g) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power must be limited to engine failure operation of multiengine, turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(h) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power must be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(i) *Continuous OEI power operation.* Unless otherwise authorized, the use of

continuous OEI power must be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

38. By amending § 27.1549 by removing the word "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and" in its place; and by adding a new paragraph (e) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

39. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

40. By amending § 29.67 by revising paragraphs (a)(2)(i), (a)(3)(i) and (b) to read as follows:

§ 29.67 Climb: One engine inoperative.

(a) * * *

(2) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power;

(B) Thirty-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(C) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(3) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for use of 30-minute OEI power is requested); or

(B) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(b) For multiengine Category B helicopters meeting the requirements for Category A in § 29.79, the steady rate of climb (or descent) must be determined at the speed for the best rate of climb (or minimum rate of descent) with the critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(2) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested).

41. By revising § 29.361 to read as follows:

§ 29.361 Engine torque.

The limit engine torque may not be less than the following:

(a) For turbine engines, the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 29.923;

(3) The torque required by § 29.927; or

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming).

(b) For reciprocating engines, the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

42. By amending § 29.549 by revising paragraph (e) to read as follows:

§ 29.549 Fuselage and rotor pylon structures.

* * * * *

(e) If approval for the use of 2½-minute OEI power is requested, each engine mount and adjacent structure must be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute OEI power combined with 1g flight loads.

43. By amending § 29.901 by revising paragraph (b)(2) and by adding new paragraph (b)(6) to read as follows:

§ 29.901 Installation.

* * * * *

(b) * * *

(2) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested.

* * * * *

(6) Design precautions must be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * *

44. By amending § 29.903 by revising paragraphs (a) and (b)(2); by removing the "or" at the end of paragraph (c)(1); by removing the period at the end of paragraph (c)(2) and inserting "; or" in its place; and by adding a new paragraph (c)(3) to read as follows:

§ 29.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) of this chapter or be otherwise approved for the intended usage.

(b) * * *

(2) Require immediate action, other than normal pilot action with primary flight controls, by any crewmember to maintain safe operation.

(c) * * *

(3) Engine restart capability must be established throughout a flight envelope appropriate to the rotorcraft.

* * * * *

45. By amending § 29.908 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 29.908 Cooling fans.

* * * * *

(a) *Category A.* For cooling fans installed in Category A rotorcraft, it must be shown that a fan blade failure will not prevent continued safe flight either because of damage caused by the failed blade or loss of cooling air.

* * * * *

(c) *Fatigue evaluation.* Unless a fatigue evaluation under § 29.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

46. By amending § 29.923 by revising paragraphs (a)(1), (a)(3) (introductory text), (a)(3)(ii), (b), (c) (introductory text), (d) through (h), and (k) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) * * *

(1) Ten-hour test cycles must be used, except that the test cycle must be extended to include the OEI test of

paragraphs (b)(2) and (k), of this section if OEI ratings are requested.

* * * * *

(3) The test torque and rotational speed must be—

* * * * *

(ii) Absorbed by the rotors to be approved for the rotorcraft.

(b) *Endurance tests; takeoff run.* The takeoff run must be conducted as follows:

(1) Except as prescribed in paragraph (b)(2) of this section, the takeoff run must consist of 1 hour of alternate runs of 5 minutes each at takeoff torque and the maximum speed for use with takeoff torque, and 5 minutes each at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotor at the minimum practical r.p.m. The engine and the rotor drive system must be accelerated at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

(2) For helicopters for which the use of a 2½-minute OEI rating is requested, the takeoff run must be conducted as prescribed in paragraph (b)(1) of this section, except for the third and sixth runs for which the takeoff torque and the maximum speed for use with takeoff torque are prescribed in that paragraph. For these runs, the following apply:

(i) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(ii) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at the 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

(c) *Endurance tests; maximum continuous run.* Three hours of continuous operation at maximum continuous torque and the maximum speed for use with maximum continuous torque must be conducted as follows:

* * * * *

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at 90 percent of maximum continuous torque and the maximum speed for use with 90 percent of maximum continuous torque must be conducted.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation at 80 percent of maximum continuous torque and the minimum speed for use with 80 percent of maximum continuous torque must be conducted.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours or, for helicopters for which the use of either 30-minute OEI power or continuous OEI power is requested, 1 hour of continuous operation at 60 percent of maximum continuous torque and the minimum speed for use with 60 percent of maximum continuous torque must be conducted.

(g) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components, such as the engine fuel or ignition systems, or whether unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph (b) of this section must be conducted in accordance with the run schedule of paragraph (b)(1) of this section without consideration of paragraph (b)(2) of this section.

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at maximum continuous torque and the maximum power-on overspeed expected in service, assuming that speed and torque limiting devices, if any, function properly.

* * * * *

(k) *Endurance tests; OEI power run.*—(1) *30-minute OEI power run.* For rotorcraft for which the use of 30-minute OEI power is requested, a run at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for a 30-minute period.

(2) *Continuous OEI power run.* For rotorcraft for which the use of continuous OEI power is requested, a run at continuous OEI torque and the maximum speed for use with continuous OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for 1 hour.

(3) The number of periods prescribed in paragraph (k)(1) or (k)(2) of this section may not be less than the number of engines, nor may it be less than two.

* * * * *

47. By amending § 29.927 by revising paragraphs (c), (d) (introductory text), and (d)(2), and by adding new paragraph (f) to read as follows:

§ 29.927 Additional test.

* * * * *

(c) *Lubrication system failure.* For lubrication systems required for proper operation of rotor drive systems, the following apply:

(1) *Category A.* Unless such failures are extremely remote, it must be shown by test that any failure which results in loss of lubricant in any normal use lubrication system will not prevent continued safe operation, although not necessarily without damage, at a torque and rotational speed prescribed by the applicant for continued flight, for at least 30 minutes after perception by the flightcrew of the lubrication system failure or loss of lubricant.

(2) *Category B.* The requirements of Category A apply except that the rotor drive system need only be capable of operating under autorotative conditions for at least 15 minutes.

(d) *Overspeed test.* The rotor drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at not less than either the higher of the rotational speed to be expected from an engine control device failure or 105 percent of the maximum rotational speed, including transients, to be expected in service. If speed and torque limiting devices are installed, are independent of the normal engine control, and are shown to be reliable, their rotational speed limits need not be exceeded. These runs must be conducted as follows:

* * * * *

(2) Acceleration and deceleration must be accomplished in a period not longer than 10 seconds (except where maximum engine acceleration rate will require more than 10 seconds), and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

* * * * *

(f) Each test prescribed by this section must be conducted without intervening disassembly and, except for the lubrication system failure test required by paragraph (c) of this section, each part tested must be in a serviceable condition at the conclusion of the test.

48. By adding a new § 29.954 to read as follows:

§ 29.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; and

(c) Corona and streamering at fuel vent outlets.

49. By revising § 29.955 to read as follows:

§ 29.955 Fuel flow.

(a) *General.* The fuel system for each engine must provide the engine with at least 100 percent of the fuel required under all operating and maneuvering conditions to be approved for the rotorcraft, including, as applicable, the fuel required to operate the engines under the test conditions required by § 29.927. Unless equivalent methods are used, compliance must be shown by test during which the following provisions are met, except that combinations of conditions which are shown to be improbable need not be considered.

(1) The fuel pressure, corrected for accelerations (load factors), must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 29.959, plus that necessary to conduct the test.

(3) The fuel head between the tank and the engine must be critical with respect to rotorcraft flight attitudes.

(4) The fuel flow transmitter, if installed, and the critical fuel pump (for pump-fed systems) must be installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from component failure.

(5) Critical values of engine rotational speed, electrical power, or other sources of fuel pump motive power must be applied.

(6) Critical values of fuel properties which adversely affect fuel flow are applied during demonstrations of fuel flow capability.

(7) The fuel filter required by § 29.997 is blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 29.1305(a)(17).

(b) *Fuel transfer system.* If normal operation of the fuel system requires fuel to be transferred to another tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the receiving tank within acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system, in addition to having appropriate manual switching capability, must be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation and any other tank that normally supplies fuel to that engine alone contains usable fuel.

50. By revising § 29.961 to read as follows:

§ 29.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems conducive to vapor formation must be shown to operate satisfactorily (within certification limits) when using fuel at the most critical temperature for vapor formation under critical operating conditions including, if applicable, the engine operating conditions defined by § 29.927(b)(1) and (b)(2).

51. By amending § 29.963 by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: General.

* * * * *

(e) The maximum exposed surface temperature of all components in the fuel tank must be less by a safe margin than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all normal or malfunction conditions of all components inside the tank.

§ 29.967 [Amended]

52. By amending § 29.967 by removing paragraph (f).

53. By revising § 29.969 to read as follows:

§ 29.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the combined tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

54. By amending § 29.971 by revising paragraph (c) to read as follows:

§ 29.971 Fuel tank sump.

* * * * *

(c) Each fuel tank must allow drainage of hazardous quantities of water from each part of the tank to the sump with the rotorcraft in any ground attitude to be expected in service.

* * * * *

55. By amending § 29.975 by removing the word "and" after the semicolon in paragraph (a)(5); by removing the period at the end of paragraph (a)(6)(ii) and inserting "; and" in its place; and by adding a new paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system must be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operations, unless a rollover is shown to be extremely remote.

* * * * *

56. By revising § 29.991 to read as follows:

§ 29.991 Fuel pumps.

(a) Compliance with § 29.955 must not be jeopardized by failure of—

(1) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(2) Any component required for pump operation except the engine served by that pump.

(b) The following fuel pump installation requirements apply:

(1) When necessary to maintain the proper fuel pressure—

(i) A connection must be provided to transmit the carburetor air intake static pressure to the proper fuel pump relief valve connection; and

(ii) The gauge balance lines must be independently connected to the carburetor inlet pressure to avoid incorrect fuel pressure readings.

(2) The installation of fuel pumps having seals or diaphragms that may leak must have means for draining leaking fuel.

(3) Each drain line must discharge where it will not create a fire hazard.

57. By amending § 29.997 by revising the introductory text and paragraph (d) to read as follows:

§ 29.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including but not limited to the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper

rotorcraft or engine fuel system operation.

58. By amending § 29.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 29.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to ensure positive closure in the off position; and

* * * * *

59. By adding a new § 29.1001 after § 29.999 and before the heading Oil System to read as follows:

§ 29.1001 Fuel jettisoning.

If a fuel jettisoning system is installed, the following apply:

(a) Fuel jettisoning must be safe during all flight regimes for which jettisoning is to be authorized.

(b) In showing compliance with paragraph (a) of this section, it must be shown that—

(1) The fuel jettisoning system and its operation are free from fire hazard;

(2) No hazard results from fuel or fuel vapors which impinge on any part of the rotorcraft during fuel jettisoning; and

(3) Controllability of the rotorcraft remains satisfactory throughout the fuel jettisoning operation.

(c) Means must be provided to automatically prevent jettisoning fuel below the level required for an all-engine climb at maximum continuous power from sea level to 5,000 feet altitude and cruise thereafter for 30 minutes at maximum range engine power.

(d) The controls for any fuel jettisoning system must be designed to allow flight personnel (minimum crew) to safely interrupt fuel jettisoning during any part of the jettisoning operation.

(e) The fuel jettisoning system must be designed to comply with the powerplant installation requirements of § 29.901(c).

(f) An auxiliary fuel jettisoning system which meets the requirements of paragraphs (a), (b), (d), and (e) of this section may be installed to jettison additional fuel provided it has separate and independent controls.

§ 29.1011 [Amended]

60. By amending § 29.1011 by revising the section heading to read "Engines: General."; by removing existing paragraph (b); by redesignating paragraphs (c) and (d) as (b) and (c), respectively; and by removing the words "* * * and rotor drive system * * *" from paragraph (e) and redesignating it as paragraph (d).

61. By amending § 29.1019 by revising paragraph (a)(3) to read as follows:

§ 29.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

62. By adding a new § 29.1027 after § 29.1025 and before the heading "Cooling" to read as follows:

§ 29.1027 Transmission and gearboxes: General.

(a) The oil system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure—

(1) Operation with any engine inoperative; and

(2) Safe autorotation.

(b) Pressure lubrication systems for transmissions and gearboxes must comply with the requirements of §§ 29.1013, paragraphs (c), (d), and (f) only, 29.1015, 29.1017, 29.1021, 29.1023, and 29.1337(d). In addition, the system must have—

(1) An oil strainer or filter through which all the lubricant flows, and must—

(i) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree; and

(ii) Be equipped with a bypass constructed and installed so that—

(A) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(B) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath;

(iii) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass;

(2) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b)(1) of this section. The requirements of paragraph (b)(1) of this section do not apply to screens installed at lubricant tank or sump outlets.

(c) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 29.1021 and 29.1337(d).

63. By amending § 29.1041 by revising paragraphs (a) and (c) to read as follows:

§ 29.1041 General.

(a) The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions for which certification is requested, and after normal engine or auxiliary power unit shutdown, or both.

* * * * *

(c) Except for ground-use-only auxiliary power units, compliance with paragraphs (a) and (b) of this section must be shown by flight tests in which the temperatures of selected powerplant component and auxiliary power unit component, engine, and transmission fluids are obtained under the conditions prescribed in those paragraphs.

64. By amending § 29.1043 by adding a new paragraph (a)(5) to read as follows:

§ 29.1043 Cooling tests.

(a) * * *

(5) For the purposes of the cooling tests, a temperature is "stabilized" when its rate of change is less than 2 °F per minute.

* * * * *

65. By amending § 29.1045 by revising paragraph (c) to read as follows:

§ 29.1045 Climb cooling test procedures.

* * * * *

(c) Each operating engine must—

(1) For helicopters for which the use of 30-minute OEI power is requested, be at 30-minute OEI power for 30 minutes, and then at maximum continuous power (or at full throttle when above the critical altitude);

(2) For helicopters for which the use of continuous OEI power is requested, be at continuous OEI power (or at full throttle when above the critical altitude); and

(3) For other rotorcraft, be at maximum continuous power (or at full throttle when above the critical altitude).

* * * * *

66. By amending § 29.1047 by removing the words "at least" from the end of the introductory text of paragraph (a)(4) and by revising

paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 29.1047 Takeoff cooling test procedures.

(a) * * *

(4) * * *

(i) Thirty minutes, if 30-minute OEI power is used; or

(ii) At least 5 minutes after the occurrence of the highest temperature recorded, if continuous OEI power or maximum continuous power is used.

* * * * *

67. By amending § 29.1093 by revising paragraph (b)(1) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(b) * * *

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of this Part; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

68. By amending § 29.1141 by revising the introductory text of paragraph (f) to read as follows:

§ 29.1141 Powerplant controls: General.

* * * * *

(f) Controls of powerplant valves required for safety must have—

* * * * *

69. By revising § 29.1143 to read as follows:

§ 29.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be arranged to allow ready synchronization of all engines by—

(1) Separate control of each engine; and

(2) Simultaneous control of all engines.

(c) Each power control must provide a positive and immediately responsive means of controlling its engine.

(d) Each fluid injection control other than fuel system control must be in the corresponding power control. However, the injection system pump may have a separate control.

(e) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

70. By amending § 29.1163 by revising paragraph (d) to read as follows:

§ 29.1163 Powerplant accessories.

* * * * *

(d) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

71. By amending § 29.1181 by adding a new paragraph (b) to read as follows:

§ 29.1181 Designated fire zones: Regions included.

* * * * *

(b) Each designated fire zone must meet the requirements of §§ 29.1183 through 29.1203.

72. By amending § 29.1189 by revising paragraphs (e) and (f) to read as follows:

§ 29.1189 Shutoff means.

* * * * *

(e) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from fire in a designated fire zone.

(f) Except for ground-use-only auxiliary power unit installations, there must be means to prevent inadvertent operation of each shutoff and to make it possible to reopen it in flight after it has been closed.

73. By amending § 29.1193 by adding a new paragraph (f) to read as follows:

§ 29.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retention for each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of—

(1) Structural or mechanical failure of the normal retention means, unless such failure is extremely improbable; or

(2) Fire in a fire zone, if such fire could adversely affect the normal means of retention.

74. By amending § 29.1305 by revising paragraphs (a)(4), (a)(17), (a)(19), (b)(2), (c)(1), and (c)(2); by adding new paragraphs (a)(20) through (a)(23); by removing the word "and" at the end of paragraph (a)(18); and by removing paragraph (c)(3) as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(4) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(i) Provide a warning to the crew when approximately 10 minutes of usable fuel remains in the tank; and

(ii) Be independent of the normal fuel quantity indicating system.

* * * * *

(17) An indicator for the filter required by § 29.997 to indicate the occurrence of contamination of the filter to the degree established in compliance with § 29.955;

* * * * *

(19) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components;

(20) An individual fuel pressure indicator for each engine, unless the fuel system which supplies that engine does not employ any pumps, filters, or other components subject to degradation or failure which may adversely affect fuel pressure at the engine;

(21) A means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 29.955;

(22) Warning or caution devices to signal to the flightcrew when ferromagnetic particles are detected by the chip detector required by § 29.1337(e); and

(23) For auxiliary power units, an individual indicator, warning or caution device, or other means to advise the flightcrew that limits are being exceeded, if exceeding these limits can be hazardous, for—

(i) Gas temperature;

(ii) Oil pressure; and

(iii) Rotor speed.

(b) * * *

(2) An independent fuel pressure warning device for each engine or a master warning device for all engines with provision for isolating the individual warning device from the master warning device; and

* * * * *

(c) * * *

(1) An individual oil pressure indicator for each engine; and

(2) Fire warning indicators, when fire detection is required.

75. By amending § 29.1337 by adding a new paragraph (e) to read as follows:

§ 29.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials must be equipped with chip

detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear within the transmission or gearbox. Each chip detector must—

(1) Be designed to provide a signal to the indicator required by § 29.1305(a)(22); and

(2) Be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

76. By amending § 29.1521 by revising the introductory texts of paragraphs (f) and (g) and by adding a new paragraph (h) to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(f) *Two and one-half minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power must be limited to engine failure operation of multiengine, turbine-powered rotorcraft for not longer than 2½ minutes for any period in which that power is used. The use of 2½-minute OEI power must also be limited by—

* * * * *

(g) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power must be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

* * * * *

(h) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power must be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests.

(2) The maximum allowable gas temperature;

(3) The maximum allowable torque; and

(4) The maximum allowable oil temperature.

77. By amending § 29.1549 by removing the word "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and" in its place; and by adding a new paragraph (e) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

78. By amending § 29.1557 by revising paragraph (c)(1)(iii) to read as follows:

§ 29.1557 Miscellaneous markings and placards.

* * * * *

(c) * * *

(1) * * *

(iii) For turbine-engine-powered rotorcraft, the permissible fuel designations, except that if impractical, this information may be included in the rotorcraft flight manual, and the fuel filler may be marked with an appropriate reference to the flight manual; and

* * * * *

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

79. The authority citation for Part 33 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

80. By amending § 33.7 by revising paragraphs (c)(1)(v) and (c)(1)(vi); by redesignating paragraph (c)(1)(vii) as (c)(1)(viii); and by adding a new paragraph (c)(1)(vii) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(1) * * *

(v) Rated 30-minute OEI power;

(vi) Rated 2½-minute OEI power;

(vii) Rated continuous OEI power; and

* * * * *

81. By amending § 33.87 by redesignating paragraph (e) as (f) without change; by revising paragraphs (a) (introductory text), (b) (introductory text), (b)(2), (c) (introductory text), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5); by revising paragraph (d) and redesignating it as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (f) of this section, as applicable. For engines tested under paragraph (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation. The following test requirements apply:

* * * * *

(b) *Engines other than certain rotorcraft engines.* For each engine except a rotorcraft engine for which a rating is desired under paragraph (c), (d), or (e) of this section, the applicant must conduct the following runs:

* * * * *

(2) *Rated maximum continuous and takeoff power and thrust.* Thirty minutes at—

(i) Rated maximum continuous power and thrust during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power and thrust during ten of the twenty-five 6-hour endurance test cycles.

* * * * *

(c) *Rotorcraft engines for which a 30-minute OEI power rating is desired.* For each rotorcraft engine for which a 30-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period, the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated 30-minute OEI power.* Thirty minutes at rated 30-minute OEI power.

(3) *Rated maximum continuous power.* Two hours at rated maximum continuous power.

(4) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the

amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(5) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

* * * * *

(d) *Rotorcraft engines for which a continuous OEI rating is desired.* For each rotorcraft engine for which a continuous OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated maximum continuous and takeoff power.* Thirty minutes at—

(i) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power during ten of the twenty-five 6-hour endurance test cycles.

(3) *Rated continuous OEI power.* One hour at rated continuous OEI power.

(4) *Rated maximum continuous power.* One hour at rated maximum continuous power.

(5) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(6) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

(7) *Starts.* One hundred starts, of which 25 starts must be preceded by at least a 2-hour engine shutdown. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time, before attempting a normal start. There must be at least 10 normal restarts with not longer than 15 minutes since engine shutdown. The remaining starts may be made after completing the 150 hours of endurance testing.

(e) *Rotorcraft engines for which a 2½-minute OEI power rating is desired.* For each rotorcraft engine for which a 2½-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff, 2½-minute OEI, and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power except that, during the third and sixth takeoff power periods, only 2½ minutes need be conducted at rated takeoff power, and the remaining 2½ minutes must be conducted at rated 2½-minute OEI power. The developed powers at takeoff, 2½-minute OEI, and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. The applicant may, during any one period, control manually the rotor speed and power while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented rating. In changing the power setting after or during each period, the power control lever must be moved in the manner prescribed in paragraph (d)(6) of this section.

(2) The tests required in paragraphs (b)(2) through (b)(6), or (c)(2) through (c)(6), or (d)(2) through (d)(7) of this section, as applicable, except that in one of the 6-hour test sequences, the last 5 minutes of the 30 minutes at takeoff power test period of paragraph (b)(2) of this section, or of the 30 minutes at 30-minute OEI power test period of paragraph (c)(2) of this section, or of the 1 hour at continuous OEI power test period of paragraph (d)(3) of this section, must be run at 2½-minute OEI power.

* * * * *

Issued in Washington, DC, on August 26, 1988.

T. Allan McArtor,

Administrator.

[FR Doc. 88-19848 Filed 8-30-88; 10:55 am]

BILLING CODE 4910-13-M

federal register

Friday
September 2, 1988

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 etc.

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52

[Federal Acquisition Circular 84-39]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-39 amends the Federal Acquisition Regulation (FAR) with respect to the following: Anti-Kickback Enforcement Act of 1986; Acquisition Streamlining; Walsh-Healey Eligibility Determination; Qualification Requirements; Small Business Size Standards; State of New Mexico Gross Receipts and Compensating Tax; Severance Pay; Price Negotiation for Construction Contracts; and F.O.B. Destination.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

FAC 84-39, Item I

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.*, under OMB Control No. 9000-0091.

FAC 84-39, Items II, III, V, VII, VIII, and IX

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

FAC 84-39, Item IV

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, *et seq.*, under OMB Control No. 9000-0083. Because the final rule does not alter the collection requirements, the approval number remains valid.

FAC 84-39, Item VI

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this final rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The certifications and other information specified in the clause at 52.229-10 are existing requirements under New Mexico State law.

B. Regulatory Flexibility Act

FAC 84-39, Item I

The interim rule published in the **Federal Register** on February 27, 1987 (52 FR 6120) contained an Initial Regulatory Flexibility Analysis. DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-39, Item II

DoD, GSA, and NASA certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the program primarily involves the engineering and design of systems and equipment which ordinarily is not accomplished by small business.

FAC 84-39, Items III, V, VIII, and IX

The Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

FAC 84-39, Item IV

The interim rule published in the **Federal Register** on August 30, 1985 (50 FR 35474) contained an Initial Regulatory Flexibility Analysis. The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis has been prepared and is on file in the FAR Secretariat. The Final Analysis will be submitted to the Chief Counsel for Advocacy, Small Business Administration.

FAC 84-39, Item VI

DoD, GSA, and NASA certify that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, because its application is limited to cost-reimbursement contracts of a limited number of agencies performed within a single state. The majority of contracts awarded to small businesses are fixed price.

FAC 84-39, Item VII

DoD, GSA, and NASA certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) because removal of the last sentence of section 31.205-6(g)(2)(i) results in no additional burden to any business and, in fact, eliminates a limitation on cost allowability. Furthermore, situations involving dual retirement and severance payments have not been frequently encountered.

C. Public Comments

FAC 84-39, Item I

On February 27, 1987, Federal Acquisition Circular (FAC) 84-24 was published in the **Federal Register** (52 FR 6120) as an interim rule. The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84-39, Item II

On January 4, 1988, a proposed rule was published in the **Federal Register** (53 FR 100). The comments that were received were considered by the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council in the development of this final rule.

FAC 84–39, Item IV

On August 30, 1985, FAC 84–11 was published in the **Federal Register** (50 FR 35474) as an interim rule to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577. Item III of the FAC implemented those provisions of the public laws related to "qualification requirements." After reviewing the public comments on the interim rule the Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council made revisions to the coverage. The FAR Councils issued for public comment on February 9, 1987 (52 FR 4082), revisions to Parts 9 and 52 to modify the definition of "qualification requirement" at § 9.201 and as used in the clause at § 52.209–1, as well as revisions to the policy in § 9.202. The FAR Councils have considered those public comments in the development of this final rule.

FAC 84–39, Item VI

On September 24, 1987, a proposed rule was published in the **Federal Register** (52 FR 35996) soliciting public comments on the Regulatory Flexibility Statement that there did not appear to be a significant impact on a substantial number of small entities. No comments were received regarding that statement. No commenters expressed opposition to the proposed FAR coverage. One commenter's suggestion, that the source of the definition of the word "services" used in the coverage be placed in the coverage, was adopted.

FAC 84–39, Item VII

On September 17, 1987, a proposed rule was published in the **Federal Register** (52 FR 35191) recommending the removal of the last sentence of FAR 31.205–6(g)(2)(i) which disallowed severance payments when paid in addition to early or normal retirement payments. The comments that were received were considered by the Councils in the development of this final rule.

List of Subjects in 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52

Government procurement.

Dated: August 29, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–39 is effective October 3, 1988.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

John Alderson,

Acting Administrator, GSA.

August 22, 1988.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–39 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Anti-Kickback Enforcement Act of 1986

FAR 3.502, 9.406–1, and 52.203–7 are being revised to implement the Anti-Kickback Enforcement Act of 1986 (41 U.S.C. 51–58). The Act was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act requires each contracting agency to include in all contracts a requirement that the contractor shall (a) have in place and follow reasonable procedures designed to prevent and detect violations of the Act, and (b) cooperate with any Federal agency investigating a violation of the Act.

Item II—Acquisition Streamlining

The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have approved changes to FAR Parts 7 and 10 to institutionalize the implementation of acquisition streamlining.

Item III—Walsh-Healey Eligibility Determination

FAR 9.104–3(a) is being revised to eliminate redundant portions of text already stated in FAR 22.608–2.

Item IV—Qualification Requirements

Federal Acquisition Circular (FAC) 84–11 was issued as an interim rule on August 30, 1985, to implement certain provisions of Pub. L. 98–525 and Pub. L. 98–577 related to "qualification requirements" and imposed new procedural obligations on Federal agencies before they could require testing or other quality assurance demonstration as a condition to award of a Government contract.

Public comments raised two significant problems. First, the interim rule appears to have defined "qualification requirements" too broadly, in that the rule appears to imply that it covers industry specifications and restrictions which the Government has neither approved nor endorsed. Second, the interim rule may have applied the new policies concerning "qualification requirements" too narrowly, in that the rule treats components of end items differently from the specific supplies or services actually purchased on a Government prime contract.

As a result of these comments, a proposed rule was issued that would modify FAR 9.206–1(d) and the clause at 52.209–1 to require that any qualification requirements applicable to a component be met before award of a prime contract, whether the contractor intends to purchase or manufacture the component. The proposed rule would have deleted the clause at 52.209–2 as no longer necessary.

Having considered all public comments received on the proposed rule, the FAR Councils have developed this final rule coverage. Changes have been made strictly for the purpose of clarification and involve no substantive changes. They are as follows:

a. The first sentence of subsection 52.209–1 has been rewritten to clarify the concept that a product or service must be qualified whether it will be provided by the contractor or a subcontractor. FAR 9.207(a)(3) is editorially revised to reflect removal of the clause at 52.207–2.

b. FAR 9.202(a)(1)(ii) is changed to indicate that the testing and evaluation costs referenced are those of a potential offeror.

Item V—Small Business Size Standards

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the **Federal Register** by the Small Business Administration on May 25, 1988. The modified size standard, SIC Code 4724, published in 53 FR 18820 (FR Doc. 88–11693) applies to solicitations issued on or after June 24, 1988. SIC Code 8731 is effective March 30, 1988, by issuance of an SBA emergency interim rule (53 FR 10244). Modified size standards, SIC Codes 3339, 3569, 3996, 5735, and 7361, published in 53 FR 18821 (FR Doc. 88–11694) apply to solicitations issued on or after July 1, 1987.

Item VI—State of New Mexico Gross Receipts and Compensating Tax

Nine Federal agencies have entered into separate agreements with the Taxation and Revenue Department of the State of New Mexico to eliminate double taxation of Government cost-reimbursable contractors who purchase

tangible personal property to be used in performing services, title to which passes to the United States upon delivery of the property to the contractor by the vendor.

The agreement is effective only when the clause at FAR 52.229-10, State of New Mexico Gross Receipts and Compensating Tax, is included in each cost-reimbursement contract for the following Federal agencies:

United States Department of Agriculture
United States Department of the Air Force
United States Department of the Army
United States Department of Energy
United States Department of the Interior
United States Department of Labor
United States Department of the Navy
United States General Services Administration
United States National Aeronautics and Space Administration

Failure to include the clause in each cost-reimbursement contract means the Government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property and reimburses the contractor for its own gross receipts tax which includes the tax already paid on purchased property (double taxation).

The coverage in FAR 29.401-6 encourages other agencies which expect to enter into cost-reimbursement contracts in the State of New Mexico to execute similar agreements with the New Mexico Taxation and Revenue Department.

Item VII—Severance Pay

FAR 31.205(g)(2)(i) is being revised to delete the provision disallowing severance payments which are in addition to early or normal retirement payments.

Item VIII—Price Negotiation for Construction Contracts

FAR 36.402(b) is being revised to clarify when certified cost or pricing data is required in connection with negotiated construction contracts.

Item IX—F.O.B. Destination

FAR 47.303 is being revised to remind contracting activities that the terms and conditions contained in FAR Subpart 47.3 are applicable to fixed-price contracts, and are only to be used as a guide for cost-reimbursement contracts. Therefore, 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 3, 7, 9, 10, 19, 29, 31, 36, 47, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

§ 1.105 [Amended]

2. Section 1.105 is amended by adding in numerical order, two FAR segments and corresponding OMB Control Numbers, to read as follows:

FAR segment	OMB Control No.
* * * * *	
52.203-7	9000-0091
* * * * *	
52.209-1	9000-0083
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502-1 is amended by adding in alphabetical order the definition "Prime Contractor" to read as follows:

§ 3.502-1 Definitions.

* * * * *

"Prime Contractor," as used in this section, means a person who has entered into a prime contract with the United States.

* * * * *

4. Section 3.502-2 is amended by revising paragraph (i)(1) to read as follows:

§ 3.502-2 General.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies against kickbacks, related company procedures and the consequences of detection; procedures requiring subcontractors to certify they have not paid kickbacks; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 7—ACQUISITION PLANNING

5. Section 7.101 is amended by adding alphabetically the definition "Acquisition streamlining" to read as follows:

§ 7.101 Definitions.

* * * * *

"Acquisition streamlining," as used in this subpart means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

* * * * *

6. Section 7.105 is amended by adding paragraph (a)(8) to read as follows:

§ 7.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(8) Acquisition streamlining. If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory (see 10.002(c)).

PART 9—CONTRACTOR QUALIFICATIONS

7. Section 9.104-3 is amended by revising paragraph (a) to read as follows:

§ 9.104-3 Application of standards.

(a) *Manufacturer or regular dealer.* See 22.608-2.)

* * * * *

8. Section 9.201 is amended by revising the definition "Qualification requirement" to read as follows:

§ 9.201 Definitions.

* * * * *

"Qualification requirement" means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

* * * * *

9. Section 9.202 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 9.202 Policy.

(a) * * *

(1) * * *

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

* * * * *

10. Section 9.206–1 is amended by revising paragraphs (b), (c), and (d) to read as follows:

9.206–1 General.

* * * * *

(b) Except when the agency head or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must assure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

* * * * *

11. Section 9.206–2 is revised to read as follows:

9.206–2 Contract clause.

The contracting officer shall insert the clause at 52.209–1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

12. Section 9.207 is amended by revising paragraph (a)(3) to read as follows:

9.207 Changes in status regarding qualification requirements.

(a) * * *

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the clause at 52.209–1, Qualification Requirements);

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

13. Section 10.000 is revised to read as follows:

10.000 Scope of part.

This part prescribes policies and procedures for using specifications, standards, and other purchase descriptions, and related considerations of acquisition streamlining (see 7.101).

14. Section 10.002 is amended by adding paragraph (c) as follows:

10.002 Policy.

* * * * *

(c) Requiring agencies, for programs which they have designated as subject to acquisition streamlining, should apply specifications standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely. The objective of acquisition streamlining is to reduce the time and cost, and improve the quality of systems acquisitions, by ensuring that contracts contain only those necessary specifications, standards, and related documents which have been tailored for application at the most appropriate time in the system acquisition cycle. To the extent practicable, contractors should be involved in recommending application and tailoring of such specifications, standards, and related documents in one phase for proposed application to the succeeding phase of the acquisition cycle.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

15. Section 19.102 is amended in the size standards tables by removing in Group 17 SIC Code 1799 Base Housing Maintenance, footnote "16" and inserting in its place footnote "17"; by removing in Group 26, SIC Code 2661 and its corresponding description and size; by revising in Group 33, SIC Code 3339; by revising in Group 35, SIC Code 3569; by removing in Group 39 SIC Code 3996, the size "500" and inserting in its place "750"; by removing in Group 44, SIC Code 4459 and its corresponding description and size; by removing in Group 47 SIC Code 4724, the size "$3.5" and inserting in its place "$0.5"; by removing in Group 49 SIC Code 4911, footnote "20" and inserting in its place "21"; by removing in Group 57 SIC Code 5735, the size "$4.5" and inserting in its place "$3.5"; by adding in Division I, following the word "Services", the footnote "16"; by removing in Group 73 SIC Code 7361, the size "$5.5" and inserting in its place "$3.5"; by removing under SIC Code 7363, the description "Base Maintenance" and corresponding size, and removing a duplication of SIC Code 7379 and its corresponding description and size; by removing in Group 76 SIC Code 7699, the footnote "17" and inserting in its place "18"; by removing in Group 87 SIC Code 8731, the footnote "18" and inserting in its place "19"; by removing in SIC Code 8744 footnote "19" and adding the additional description "Base Maintenance 17" and corresponding size "$13.5"; by removing in footnote "9", the second sentence; by revising footnotes "10" and "19"; by redesignating the existing footnotes "16" thru "20" as "17" thru "21"; by adding a new footnote "16"; by removing in footnote "17" SIC Code "7363" and inserting in its place "8744"; and by revising in the definition "Base Maintenance" the fifth sentence to read as follows:

19.102 Size standards.

* * * * *

3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750

* * * * *

3569	General Industrial Machinery and Equipment, N.E.C	500

* * * * *

Footnotes.

* * * * *

[10] SIC 4724 and 6531: As measured by total revenues, normally consisting primarily of commissions in millions of dollars.

* * * * *

[16] For all industries not specifically listed in this division, the size standard is $3.5 million.

[17] * * *

"Base Maintenance" * * * If the contract involves the use of special trade contractors

(plumbing, painting, plastering, carpentering, etc.), all such specialized special trade construction activities will be considered a single activity, which is Base Housing Maintenance. * * *

* * * * *

[19] SIC–8731: For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific products are classified.

Research and Development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: Economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See Part 121.7 of 13 CFR.

For research and development for aircraft, a size standard of 1,500 employees shall apply.

For research and development for guided missiles and space vehicles; aircraft engines; aircraft parts; guided missiles and space vehicle propulsion units and propulsion unit parts; guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified, a size standard of 1,000 employees shall apply. Research and development for guided missiles and space vehicles includes evaluation and simulation and other services requiring thorough knowledge of complete guided missiles and space craft.

* * * * *

16. Section 19.705–6 is amended by revising paragraphs (a) and (b) to read as follows:

19.705–6 Postaward responsibilities of the contracting officer.

* * * * *

(a) Notifying the SBA of the award by sending a copy of the award document to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contract will be performed.

(b) Forwarding a copy of each plan and any associated approvals to the Assistant Regional Administrator for Procurement Assistance in the SBA region where the contractor's headquarters is located, if any company-wide plans were received from offerors of commercial products.

* * * * *

PART 29—TAXES

17. Section 29.401–6 is added to read as follows:

29.401–6 New Mexico gross receipts and compensating tax.

(a) *Definition.* "Services," as used in this subsection, is as defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec. 7–9–3(k) NM SA 1978, and means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling or leasing property. "Services" includes activities performed by a person for its members of shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Services" also includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

(b) *Contract clause.* The contracting officer shall insert the clause at 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the executive agencies identified in paragraph (c) of this subsection when all three of the following conditions exist:

(1) The contractor will be performing a cost-reimbursement contract.

(2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor.

(3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

(c) *Participating agencies.* (1) The executive agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—

United States Department of Agriculture;
United States Department of the Air Force;
United States Department of the Army;
United States Department of Energy;
United States Department of the Interior;
United States Department of Labor;
United States Department of the Navy;
United States General Services Administration; and
United States National Aeronautics and Space Administration.

(2) Any other Federal agency which expects to award cost-reimbursement contracts to be performed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

18. Section 31.205–6 is amended by removing the last sentence in paragraph (g)(2)(i).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

19. Section 36.402 is amended by revising paragraph (b)(1) to read as follows:

36.402 Price negotiation.

* * * * *

(b) * * *

(1) When the submission of certified cost or pricing data is not required (see 15.804–2 and 15.804–3), and any element of a proposal differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost data concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

PART 47—TRANSPORTATION

20. Section 47.303 is revised to read as follows:

47.303 Standard delivery terms and contract clauses.

Standard delivery terms are listed in 47.303–1 through 47.303–16 (but see 47.300 regarding applicability to cost reimbursemernt contracts).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 52.203–7 is amended by removing in the title of the clause the date "(FEB 1987)" and inserting in its place "(XXX 1988)"; by adding in alphabetical order in paragraph (a) of the clause the definition "Prime Contractor"; and by revising paragraphs (c)(4) and (c)(5) to read as follows:

52.203-7 Anti-Kickback Procedures.

* * * * *

(a) * * *

"Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

* * * * *

(c) * * *

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold, from sums owed a subcontractor under the prime contract, the amount of any kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including this subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under under this contract.

22. Section 52.209-1 is revised to read as follows:

52.209-1 Qualification Requirements.

As prescribed in 9.206-2, insert the following clause:

QUALIFICATION REQUIREMENTS (XXX 1988)

(a) Definition: "Qualification Requirement," as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) _____

(Address) _____

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____

Test Number _____

(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product, or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror shall submit evidence of qualification with its offer in order to receive consideration. If this is a sealed bid acquisition and the product, manufacturer, or offeror that is already qualified or is to be qualified before award is not identified, either above or elsewhere in the bid, the Contracting Officer shall reject the bid. Unless determined to be in the Government's interests, this acquisition will not be delayed in order to provide an offeror with an opportunity to meet the standards specified for qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause.)

52.209-2 [Reserved]

23. Section 52.209-2 is removed and reserved.

24. Section 52.229-10 is added to read as follows:

52.229-10 State of New Mexico Gross Receipts and Compensating Tax.

As prescribed in 29.401-6(b), insert the following clause:

STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (XXX 1988)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3C, to the State of New Mexico Taxation and Revenue Department, Revenue Division, P.O. Box 630, Santa Fe, New Mexico 87509. When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (*_____) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (*_____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*_____), may participate in any matters or proceedings pertaining to this clause or the above-mentioned agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*_____) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-6(b) (1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

(End of clause.)

(*Insert appropriate agency name in blanks.)

[FR Doc. 88-19950 Filed 9-1-88; 8:45 am]

BILLING CODE 6820-61-M

federal register

Friday
September 2, 1988

Part IV

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for June 1988

ENVIRONMENTAL PROTECTION AGENCY

(OPTS-53107; FRL-3433-1)

Premanufacture Notices; Monthly Status Report for June 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for JUNE 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53107)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Lawrence Culleen, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during June; (b) PMNs received previously and still under review at the end of June; (c) PMNs for which the notice review period has ended during June; (d) chemical substances for which EPA has received a notice of commencement to manufacture during June; and (e) PMNs for which the review period has been suspended. Therefore, the June 1988 PMN Status Report is being published.

Date: August 10, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

PREMANUFACTURE NOTICE MONTHLY STATUS REPORT—JUNE 1988

I. 164 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.	
P 88-1486	P 88-1551
P 88-1487	P 88-1552
P 88-1488	P 88-1553
P 88-1489	P 88-1554
P 88-1490	P 88-1555
P 88-1491	P 88-1556
P 88-1492	P 88-1557
P 88-1493	P 88-1558
P 88-1494	P 88-1559
P 88-1495	P 88-1560
P 88-1496	P 88-1561
P 88-1497	P 88-1562
P 88-1498	P 88-1563
P 88-1499	P 88-1564
P 88-1500	P 88-1565
P 88-1501	P 88-1566
P 88-1502	P 88-1567
P 88-1503	P 88-1568
P 88-1504	P 88-1569
P 88-1505	P 88-1570
P 88-1506	P 88-1571
P 88-1507	P 88-1572
P 88-1508	P 88-1573
P 88-1509	P 88-1574
P 88-1510	P 88-1575
P 88-1511	P 88-1576
P 88-1512	P 88-1577
P 88-1513	P 88-1578
P 88-1514	P 88-1579
P 88-1515	P 88-1580
P 88-1516	P 88-1581
P 88-1517	P 88-1582
P 88-1518	P 88-1583
P 88-1519	P 88-1584
P 88-1520	P 88-1585
P 88-1521	P 88-1586
P 88-1522	P 88-1587
P 88-1523	P 88-1588
P 88-1524	P 88-1589
P 88-1525	P 88-1590
P 88-1526	P 88-1591
P 88-1527	P 88-1592
P 88-1528	P 88-1593
P 88-1529	P 88-1594
P 88-1530	P 88-1595
P 88-1531	P 88-1596
P 88-1532	P 88-1597
P 88-1533	P 88-1598
P 88-1534	P 88-1599
P 88-1535	P 88-1600
P 88-1536	P 88-1601
P 88-1537	P 88-1602
P 88-1538	P 88-1603
P 88-1539	P 88-1604
P 88-1540	P 88-1605
P 88-1541	P 88-1606
P 88-1542	P 88-1607
P 88-1543	P 88-1608
P 88-1544	P 88-1609
P 88-1545	P 88-1610
P 88-1546	P 88-1611
P 88-1547	P 88-1612
P 88-1548	P 88-1613
P 88-1549	P 88-1614
P 88-1550	P 88-1615
P 88-1616	P 88-1633
P 88-1617	P 88-1634
P 88-1618	P 88-1635
P 88-1619	P 88-1636
P 88-1620	Y 88-0200
P 88-1621	Y 88-0201
P 88-1622	Y 88-0202
P 88-1623	Y 88-0203
P 88-1624	Y 88-0204
P 88-1625	Y 88-0205
P 88-1626	Y 88-0206
P 88-1627	Y 88-0207
P 88-1628	Y 88-0208
P 88-1629	Y 88-0209
P 88-1630	Y 88-0210
P 88-1631	Y 88-0211
P 88-1632	Y 88-0212

II. 259 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	
P 83-0669	P 87-1438
P 84-1182	P 87-1437
P 84-1183	P 87-1471
P 85-0216	P 87-1542
P 85-0535	P 87-1546
P 85-0536	P 87-1547
P 85-0619	P 87-1548
P 85-0718	P 87-1549
P 85-0941	P 87-1555
P 86-0065	P 87-1673
P 86-0066	P 87-1676
P 86-0067	P 87-1677
P 86-0092	P 87-1679
P 86-0294	P 87-1680
P 86-0295	P 87-1694
P 86-0592	P 87-1759
P 86-1078	P 87-1769
P 86-1189	P 87-1770
P 86-1235	P 87-1787
P 86-1356	P 87-1830
P 86-1602	P 87-1865
P 86-1603	P 87-1872
P 86-1604	P 87-1879
P 86-1607	P 87-1881
P 87-0057	P 87-1882
P 87-0058	P 88-0049
P 87-0059	P 88-0079
P 87-0068	P 88-0083
P 87-0105	P 88-0134
P 87-0197	P 88-0138
P 87-0198	P 88-0156
P 87-0199	P 88-0157
P 87-0200	P 88-0182
P 87-0201	P 88-0195
P 87-0318	P 88-0225
P 87-0323	P 88-0245
P 87-0326	P 88-0262
P 87-0641	P 88-0263
P 87-0642	P 88-0275
P 87-0723	P 88-0290
P 87-0770	P 88-0319
P 87-0794	P 88-0320
P 87-0930	P 88-0353
P 87-0931	P 88-0387
P 87-0963	P 88-0388
P 87-0971	P 88-0393
P 87-0973	P 88-0410
P 87-1028	P 88-0436
P 87-1041	P 88-0468
P 87-1066	P 88-0515
P 87-1104	P 88-0522
P 87-1192	P 88-0547
P 87-1226	P 88-0567
P 87-1227	P 88-0568
P 87-1273	P 88-0576
P 87-1337	P 88-0598
P 87-1379	P 88-0602
P 87-1417	P 88-0606

P 88-0622
P 88-0658
P 88-0671
P 88-0701
P 88-0715
P 88-0716
P 88-0726
P 88-0759
P 88-0770
P 88-0792
P 88-0821
P 88-0831
P 88-0836
P 88-0837
P 88-0854
P 88-0862
P 88-0864
P 88-0875
P 88-0884
P 88-0886
P 88-0888
P 88-0889
P 88-0890
P 88-0894
P 88-0898
P 88-0900
P 88-0914
P 88-0918
P 88-0972
P 88-0981
P 88-0985
P 88-0997
P 88-0998
P 88-0999
P 88-1000
P 88-1005
P 88-1020
P 88-1021
P 88-1035
P 88-1037
P 88-1040
P 88-1063
P 88-1066
P 88-1069
P 88-1070
P 88-1071
P 88-1102
P 88-1109
P 88-1110
P 88-1115
P 88-1116
P 88-1117
P 88-1118
P 88-1120
P 88-1121
P 88-1122
P 88-1125
P 88-1136
P 88-1154
P 88-1163
P 88-1168
P 88-1169
P 88-1170
P 88-1180
P 88-1186
P 88-1189
P 88-1197
P 88-1200
P 88-1205
P 88-1206
P 88-1211
P 88-1212
P 88-1219
P 88-1220
P 88-1221
P 88-1223
P 88-1224
P 88-1229
P 88-1231
P 88-1235
P 88-1236
P 88-1240
P 88-1243
P 88-1244
P 88-1246
P 88-1250
P 88-1251
P 88-1252
P 88-1267
P 88-1271
P 88-1272
P 88-1273
P 88-1274
P 88-1275
P 88-1276
P 88-1277
P 88-1278
P 88-1293
P 88-1303
P 88-1304
P 88-1308
P 88-1313
P 88-1314
P 88-1317
P 88-1325
P 88-1326
P 88-1337
P 88-1338
P 88-1342
P 88-1345
P 88-1346
P 88-1364
P 88-1365
P 88-1367
P 88-1370
P 88-1372
P 88-1375
P 88-1377
P 88-1385
P 88-1403
P 88-1404
P 88-1409
P 88-1425
P 88-1426
P 88-1432
P 88-1436
P 88-1439
P 88-1440
P 88-1443
P 88-1445
P 88-1446
P 88-1455
P 88-1458
P 88-1460
P 88-1466
P 88-1471
P 88-1472
P 88-1473
P 88-1475
P 88-1480
P 88-1484
P 88-1485
Y 88-0178

III. 205 Premanufacture Notices and Exemption Request for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN NO.

P 88-1712
P 87-0547
P 87-0549
P 87-0752
P 88-0348
P 88-0410
P 88-0441
P 88-0468
P 88-0601
P 88-0720
P 88-0742
P 88-0781
P 88-0782
P 88-0879
P 88-0910
P 88-0932
P 88-0935
P 88-0936
P 88-0937
P 88-0938
P 88-0939
P 88-0940
P 88-0941
P 88-0942
P 88-0943
P 88-0944
P 88-0945
P 88-0946
P 88-0947
P 88-0948
P 88-0949
P 88-0950
P 88-0951
P 88-0952
P 88-0953
P 88-0954
P 88-0955
P 88-0956
P 88-0957
P 88-0958
P 88-0959
P 88-0960
P 88-0961
P 88-0962
P 88-0963
P 88-0964
P 88-0965
P 88-0966
P 88-0967
P 88-0969
P 88-0970
P 88-0971
P 88-0973
P 88-0974
P 88-0975
P 88-0976
P 88-0977
P 88-0978
P 88-0979
P 88-0980
P 88-0982
P 88-0983
P 88-0984
P 88-0986
P 88-0987
P 88-0988
P 88-0989
P 88-0990
P 88-0991
P 88-0992
P 88-0993
P 88-0994
P 88-0995
P 88-0996
P 88-1000
P 88-1001
P 88-1002
P 88-1003
P 88-1004
P 88-1006
P 88-1007
P 88-1008
P 88-1009
P 88-1010
P 88-1011
P 88-1012
P 88-1013
P 88-1014
P 88-1015
P 88-1016
P 88-1017
P 88-1018
P 88-1019
P 88-1022
P 88-1023
P 88-1024
P 88-1025
P 88-1026
P 88-1027
P 88-1028
P 88-1029
P 88-1030
P 88-1032
P 88-1033
P 88-1034
P 88-1036
P 88-1038
P 88-1039
P 88-1040
P 88-1041
P 88-1042
P 88-1043
P 88-1044
P 88-1045
P 88-1046
P 88-1047
P 88-1048
P 88-1049
P 88-1050
P 88-1051
P 88-1052
P 88-1053
P 88-1054
P 88-1055
P 88-1056
P 88-1057
P 88-1058
P 88-1059
P 88-1060
P 88-1061
P 88-1062
P 88-1064
P 88-1065
P 88-1066
P 88-1067
P 88-1068
P 88-1069
P 88-1070
P 88-1071
P 88-1072
P 88-1073
P 88-1074
P 88-1075
P 88-1076
P 88-1077
P 88-1078
P 88-1079
P 88-1080
P 88-1081
P 88-1082
P 88-1083
P 88-1084
P 88-1085
P 88-1086
P 88-1087
P 88-1088
P 88-1089
P 88-1090
P 88-1091
P 88-1092
P 88-1093
P 88-1094
P 88-1095
P 88-1096
P 88-1097
P 88-1098
P 88-1099
P 88-1100
P 88-1101
P 88-1102
P 88-1103
P 88-1104
P 88-1105
P 88-1106
P 88-1107
P 88-1108
P 88-1110
P 88-1111
P 88-1112
P 88-1113
P 88-1114
P 88-1119
P 88-1123
P 88-1124
P 88-1125
P 88-1126
P 88-1127
P 88-1128
P 88-1129
P 88-1130
P 88-1131
P 88-1132
P 88-1133
Y 88-0188
Y 88-0191
Y 88-0192
Y 88-0193
Y 88-0194
Y 88-0196
Y 88-0197
Y 88-0198
Y 88-0199
Y 88-0200
Y 88-0202
Y 88-0203

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 81-0240	N,N'-bis(2-ethylhexyloxycarbonylpheny)formamidine	May 9, 1988.
P 82-0289	Aliphatic polyamine and bisphenol A, epichlorohydrin condensate; reacted with acrylonitrile and ethylene oxide	Mar. 25, 1988.
P 83-0603	G Substituted nitrile	Oct. 6, 1983.
P 83-1042	Acridine, 9-phenyl-	Apr. 18, 1988.
P 85-0559	G Alkyl calixaryl acetate	May 13, 1988.
P 86-0548	G Alicyclic aliphatic polyester	Apr. 20, 1988.
P 86-0554	Poly(oxy-1,2-ethanediyl), alpha-(1 oxo-2-propenyl)-omega-(dodecyloxy)-	Do.
P 86-0594	G Modified formal dehyde polymer	Apr. 5, 1988.
P 86-0701	G Acrylic resin	June 18, 1986.
P 86-1639	G Octadecanoic acid, glycol ester	Apr. 27, 1988.
P 86-1701	G Hydroxylated, unsaturated natural ester	Mar. 23, 1988.
P 87-0005	G 2-methyl-4-methoxy-diphenylamine	Mar. 26, 1988.
P 87-0148	G Acrylate-capped polyurethane diol	Apr. 5, 1988.

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 87-0170	Carboxylic acid salt of a tertiary amine	Apr. 6, 1988.
P 87-0524	G Substituted benzoyl benzoic acid	Apr. 12, 1988.
P 87-0759	G Fluorinated cotelomer	May 13, 1988.
P 87-0836	G Inert perfluorocarbon liquid	Apr. 21, 1988.
P 87-0864	G Fluorinated copolymer	May 13, 1988.
P 87-1091	Copolyester based on arsonatic dicarbonic acids	Apr. 9, 1988.
P 87-1117	G Epoxylated alkyl amine	Mar. 14, 1988.
P 87-1118	G Epoxylated alkyl quaternary ammonium salt	Mar. 22, 1988.
P 87-1320	G Chlorohexidine base	May 9, 1988.
P 87-1400	G Vinyl resin or vinylchloride-acrylic acid ester copolymer with oh-functional sites	May 11, 1988.
P 87-1460	G Substituted-phenyl Substituted-(methoxyphenyl alkanamide)	Apr. 18, 1988.
P 87-1498	Butene-2-oic acid, cyclohexyl ester	Apr. 28, 1988.
P 87-1528	G Acetyl-1-dimethyl-3,3-cyclohexene-1	Do.
P 87-1560	G Poly(propylene carbomate)	Apr. 14, 1988.
P 87-1577	G Alkoxy modified Organopolysiloxane	May 7, 1988.
P 87-1580	Dimethyl cyclosilane	Apr. 12, 1988.
P 87-1601	G Modified polymeric amine	Apr. 13, 1988.
P 87-1632	G Alkylbenzene	Apr. 25, 1988.
P 87-1633	G Metal salt of alkaryl sulfonate	May 2, 1988.
P 87-1635	G Metal salt of alkaryl sulfonate	Apr. 29, 1988.
P 87-1648	G Substituted phthalic anhydride	May 2, 1988.
P 87-1660	G Halogenated alkene	Mar. 25, 1988.
P 87-1696	G Amine salt of phosphoric acid	May 4, 1988.
P 87-1786	4,4'-bis(5-Chloro-3-(2,4-disulfo-5-(N-ethyl-2-oxo-3-carbamide-4-methyl-6-hydroxypyridyl-5-azo)phenylamino)-5-triazinylamino)) stilbene-2,2'-disulfonic acid, hexasodium salt.	Apr. 19, 1988.
P 87-1838	G Acrylic lactone copolymer	Apr 21, 1988.
P 87-1839	G Acrylic lactone copolymer	Apr. 29, 1988.
P 87-1844	Toluene	Apr. 12, 1988.
P 87-1847	G Organosilane	May 7, 1988.
P 87-1848	Dimethyl cyclosiloxane; 2,4,6,8-tetramethyl-2,4,6,8-tetrakis (3,3,3-trifluoropropyl); cyclotetrasiloxane	Do.
P 88-0025	G Substituted-aminophenyl substituted-heteromono, salt	Apr. 22, 1988.
P 88-0074	G Styrene butadiene polymer with alkanedioic acid and alkane ester	Apr. 18, 1988.
P 88-0077	G Alicycle acid anhydride	Apr. 17, 1988.
P 88-0088	G Aromatic substituted ethylene diamine	Mar. 21, 1988.
P 88-0098	G Polyamide-olefin graft copolymer	Apr. 18, 1988.
P 88-0108	G Modified organo silicone	May 7, 1988.
P 88-0113	Diethyl cyclosiloxane	Apr. 12, 1988.
P 88-0133	Tris((1-methylethenyl)oxy)phenyl silane	Mar. 4, 1988.
P 88-0152	Methanol	Apr. 10, 1988.
P 88-0159	Propionic acid, lithium salt (1:)	Apr. 21, 1988.
P 88-0160	Maleic acid, dilirhium salt	Do.
P 88-0161	Maleic acid, monolithium salt	Do.
P 88-0273	Organic ester	May 9, 1988.
P 88-0291	G Unsaturated acidic polycarboxylic acid ester	May 4, 1988.
P 88-0308	G Polyterpene resin	Apr. 29, 1988.
P 88-0310	G Polyurea A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	May 30, 1988.
P 88-0342	G Polyurea. A polyisocyanate(aliphatic) and A polyamine(aliphatic) condensate	Do.
P 88-0344	G Terpene-stryene resin	May 1, 1988.
P 88-0386	G Hydroxy resin	Apr. 20, 1988.
P 88-0397	G Polyester acetate	Apr. 18, 1988.
P 88-0486	Resin; sulfuric acid, aluminum salt (3:2)	May 11, 1988.
P 88-0500	G Rubber modified polyamide	Apr. 22, 1988.
P 88-0501	G Aliphatic aromatic reaction products	Do.
P 88-0502	G S-Triaryl-branched aryl-alkyl-aryl-capped polycarbonate	Apr. 19, 1988.
P 88-0558	G Hydroxyacrylic resin	May 6, 1988.
P 88-0620	G Derivative of poly-(oxy(1-ethyl-1,2-Ethanediyl))-.alpha.-(P-Tetra(propopene)-phenoxy-.omega.-Hydro)ester with carbonochloridic acid.	May 16, 1988.
P 88-0656	G Water-reducible epoxy ester copolymer resin	Apr. 26, 1988.
P 88-0695	G Substituted polysiloxane	May 6, 1988.
P 88-0775	G Polymer of benezenedicarboxylic acid, alkanetriol, vegetable oil and fatty acids, and phenolic resin	May 9, 1988.
P 88-0784	G Solvent-free baking alkyd	Do.
Y 85-0080	G Polyoxyalkylene modified dimethylsilicone	May 1, 1988.
Y 87-0097	G Alkyd	May 2, 1988.
Y 87-0259	G Polyester	May 6, 1988.
Y 88-0054	G Styrene copolymer	Apr. 26, 1988.
Y 88-0101	G 2-Oxepanone, polymer with, glycols and 1,1'-methylenebis(isocyanatobenene)	Mar. 10, 1988.
Y 88-0130	G Polymer of aromatic diacid, alkanediol, and branched alkanediol	Apr. 23, 1988.
Y 88-0135	G Resin modified phenolic resin	Apr. 24, 1988.
Y 88-0136	G Resin modified phenolic resin	Do.
Y 88-0139	G Polymer of aromatic diacid, alkanediol, and branched-alkanediol	May 2, 1988.
Y 88-0140	G Aliphatic polyester urethane	Apr. 8, 1988.
Y 88-0143	G Carboxylated polyamide	Apr. 25, 1988.
Y 88-0162	G Aqueous solutions of acrylic polymer salts	Apr. 29, 1988.
Y 88-0170	G Unsaturated polyester resin	May 6, 1988.
Y 88-0171	G Random copolymer emulsion	Do.
Y 88-0176	G Butadiene-containing polymer	May 10, 1988.

V. 50 PREMANUFACTURE NOTICES FOR WHICH THE PERIOD HAS BEEN SUSPENDED

PMN No.	
P 87-1787	P 88-1186
P 88-0179	P 88-1200
P 88-0183	P 88-1217
P 88-0212	P 88-1218
P 88-0395	P 88-1219
P 88-0522	P 88-1221
P 88-0701	P 88-1271
P 88-0759	P 88-1272
P 88-0770	P 88-1273
P 88-0864	P 88-1274
P 88-0884	P 88-1303
P 88-0886	P 88-1308
P 88-0952	P 88-1309
P 88-0953	P 88-1313
P 88-0972	P 88-1314
P 88-0981	P 88-1405
P 88-0985	P 88-1425
P 88-0997	P 88-1471
P 88-0998	P 88-1485
P 88-0999	P 88-1520
P 88-1021	P 88-1546
P 88-1031	Y 88-0178
P 88-1059	Y 88-0188
P 88-1063	Y 88-0196
P 88-1106	Y 88-0201

[FR Doc. 88-18956 Filed 9-1-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
September 2, 1988

Part V

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for January 1988

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53102; FRL-3424-1]

Premanufacture Notices; Monthly Status Report for January 1988

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for January 1988.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "(OPTS-53102)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room L-100, 401 M Street SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during January; (b) PMNs received previously and still under review at the end of January; (c) PMNs for which the notice review period has ended during January; (d) chemical substances for which EPA has received a notice of commencement to manufacture during January; and (e) PMNs for which the review period has been suspended. Therefore, the January 1988 PMN Status Report is being published.

As stated in the February 1988 monthly status report, published in the **Federal Register** of June 28, 1988 (53 FR 24402), publication of the monthly status reports since October 1987 was delayed due to a computer sorting error, which has been corrected. This document reflects a cumulative publication of PMN activity from October 1987 through January 1988.

Date: July 25, 1988.

Steve Newburg-Rinn,

Chief, Public Data Branch, Information Management Division, Office of Toxic Substances.

Premanufacture Notice Monthly Status Report

January 1988

I. 792 Premanufacture Notices and Exemption Requests Received During the Month

PMN No.	
P 88-0001	P 88-0060
P 88-0002	P 88-0061
P 88-0003	P 88-0062
P 88-0004	P 88-0063
P 88-0005	P 88-0064
P 88-0006	P 88-0065
P 88-0007	P 88-0066
P 88-0008	P 88-0067
P 88-0009	P 88-0068
P 88-0010	P 88-0069
P 88-0011	P 88-0070
P 88-0012	P 88-0071
P 88-0013	P 88-0072
P 88-0014	P 88-0073
P 88-0015	P 88-0074
P 88-0016	P 88-0075
P 88-0017	P 88-0076
P 88-0018	P 88-0077
P 88-0019	P 88-0078
P 88-0020	P 88-0079
P 88-0021	P 88-0080
P 88-0022	P 88-0081
P 88-0023	P 88-0082
P 88-0024	P 88-0083
P 88-0025	P 88-0084
P 88-0026	P 88-0085
P 88-0027	P 88-0086
P 88-0028	P 88-0087
P 88-0029	P 88-0088
P 88-0030	P 88-0089
P 88-0031	P 88-0090
P 88-0032	P 88-0091
P 88-0033	P 88-0092
P 88-0034	P 88-0093
P 88-0035	P 88-0094
P 88-0036	P 88-0095
P 88-0037	P 88-0096
P 88-0038	P 88-0097
P 88-0039	P 88-0098
P 88-0040	P 88-0099
P 88-0041	P 88-0100
P 88-0042	P 88-0101
P 88-0043	P 88-0102
P 88-0044	P 88-0103
P 88-0045	P 88-0104
P 88-0046	P 88-0105
P 88-0047	P 88-0106
P 88-0048	P 88-0107
P 88-0049	P 88-0108
P 88-0050	P 88-0109
P 88-0051	P 88-0110
P 88-0052	P 88-0111
P 88-0053	P 88-0112
P 88-0054	P 88-0113
P 88-0055	P 88-0114
P 88-0056	P 88-0115
P 88-0057	P 88-0116
P 88-0058	P 88-0117
P 88-0059	P 88-0118
P 88-0119	P 88-0204
P 88-0120	P 88-0205
P 88-0121	P 88-0206
P 88-0122	P 88-0207
P 88-0123	P 88-0208
P 88-0124	P 88-0209
P 88-0125	P 88-0210
P 88-0126	P 88-0211
P 88-0127	P 88-0212
P 88-0128	P 88-0213
P 88-0129	P 88-0214
P 88-0130	P 88-0215
P 88-0131	P 88-0216
P 88-0132	P 88-0217
P 88-0133	P 88-0218
P 88-0134	P 88-0219
P 88-0135	P 88-0220
P 88-0136	P 88-0221
P 88-0137	P 88-0222
P 88-0138	P 88-0223
P 88-0139	P 88-0224
P 88-0140	P 88-0225
P 88-0141	P 88-0226
P 88-0142	P 88-0227
P 88-0143	P 88-0228
P 88-0144	P 88-0229
P 88-0145	P 88-0230
P 88-0146	P 88-0231
P 88-0147	P 88-0232
P 88-0148	P 88-0233
P 88-0149	P 88-0234
P 88-0150	P 88-0235
P 88-0151	P 88-0236
P 88-0152	P 88-0237
P 88-0153	P 88-0238
P 88-0154	P 88-0239
P 88-0155	P 88-0240
P 88-0156	P 88-0241
P 88-0157	P 88-0242
P 88-0158	P 88-0243
P 88-0159	P 88-0244
P 88-0160	P 88-0245
P 88-0161	P 88-0246
P 88-0162	P 88-0247
P 88-0163	P 88-0248
P 88-0164	P 88-0249
P 88-0165	P 88-0250
P 88-0166	P 88-0251
P 88-0167	P 88-0252
P 88-0168	P 88-0253
P 88-0169	P 88-0254
P 88-0170	P 88-0255
P 88-0171	P 88-0256
P 88-0172	P 88-0257
P 88-0173	P 88-0258
P 88-0174	P 88-0259
P 88-0175	P 88-0260
P 88-0176	P 88-0261
P 88-0177	P 88-0262
P 88-0178	P 88-0263
P 88-0179	P 88-0264
P 88-0180	P 88-0265
P 88-0181	P 88-0266
P 88-0182	P 88-0267
P 88-0183	P 88-0268
P 88-0184	P 88-0269
P 88-0185	P 88-0270
P 88-0186	P 88-0271
P 88-0187	P 88-0272
P 88-0188	P 88-0273
P 88-0189	P 88-0274
P 88-0190	P 88-0275
P 88-0191	P 88-0276
P 88-0192	P 88-0277
P 88-0193	P 88-0278
P 88-0194	P 88-0279
P 88-0195	P 88-0280
P 88-0196	P 88-0281
P 88-0197	P 88-0282
P 88-0198	P 88-0283
P 88-0199	P 88-0284
P 88-0200	P 88-0285
P 88-0201	P 88-0286
P 88-0202	P 88-0287
P 88-0203	P 88-0288

P 88-0289
P 88-0290
P 88-0291
P 88-0292
P 88-0293
P 88-0294
P 88-0295
P 88-0296
P 88-0297
P 88-0298
P 88-0299
P 88-0300
P 88-0301
P 88-0302
P 88-0303
P 88-0304
P 88-0305
P 88-0306
P 88-0307
P 88-0308
P 88-0309
P 88-0310
P 88-0311
P 88-0312
P 88-0313
P 88-0314
P 88-0315
P 88-0316
P 88-0317
P 88-0318
P 88-0319
P 88-0320
P 88-0321
P 88-0322
P 88-0323
P 88-0324
P 88-0325
P 88-0326
P 88-0327
P 88-0328
P 88-0329
P 88-0330
P 88-0331
P 88-0332
P 88-0333
P 88-0334
P 88-0335
P 88-0336
P 88-0337
P 88-0338
P 88-0339
P 88-0340
P 88-0341
P 88-0342
P 88-0343
P 88-0344
P 88-0345
P 88-0346
P 88-0347
P 88-0348
P 88-0349
P 88-0350
P 88-0351
P 88-0352
P 88-0353
P 88-0354
P 88-0355
P 88-0356
P 88-0357
P 88-0358
P 88-0359
P 88-0360
P 88-0361
P 88-0362
P 88-0363
P 88-0364
P 88-0365
P 88-0366
P 88-0367
P 88-0368
P 88-0369
P 88-0370
P 88-0371
P 88-0372
P 88-0373
P 88-0374
P 88-0375
P 88-0376
P 88-0377
P 88-0378
P 88-0379
P 88-0380
P 88-0381
P 88-0382
P 88-0383
P 88-0384
P 88-0385
P 88-0386
P 88-0387
P 88-0388
P 88-0389
P 88-0390
P 88-0391
P 88-0392
P 88-0393
P 88-0394
P 88-0395
P 88-0396
P 88-0397
P 88-0398
P 88-0399
P 88-0400
P 88-0401
P 88-0402
P 88-0403
P 88-0404
P 88-0405
P 88-0406
P 88-0407
P 88-0408
P 88-0409
P 88-0410
P 88-0411
P 88-0412
P 88-0413
P 88-0414
P 88-0415
P 88-0416
P 88-0417
P 88-0418
P 88-0419
P 88-0420
P 88-0421
P 88-0422
P 88-0423
P 88-0424
P 88-0425
P 88-0426
P 88-0427
P 88-0428
P 88-0429
P 88-0430
P 88-0431
P 88-0432
P 88-0433
P 88-0434
P 88-0435
P 88-0436
P 88-0437
P 88-0438
P 88-0439
P 88-0440
P 88-0441
P 88-0442
P 88-0443
P 88-0444
P 88-0445
P 88-0446
P 88-0447
P 88-0448
P 88-0449
P 88-0450
P 88-0451
P 88-0452
P 88-0453
P 88-0454
P 88-0455
P 88-0456
P 88-0457
P 88-0458
P 88-0459
P 88-0460
P 88-0461
P 88-0462
P 88-0463
P 88-0464
P 88-0465
P 88-0467
P 88-0468
P 88-0469
P 88-0470
P 88-0471
P 88-0472
P 88-0473
P 88-0474
P 88-0475
P 88-0476
P 88-0477
P 88-0478
P 88-0479
P 88-0480
P 88-0481
P 88-0482
P 88-0483
P 88-0484
P 88-0485
P 88-0486
P 88-0487
P 88-0488
P 88-0489
P 88-0490
P 88-0491
P 88-0492
P 88-0493
P 88-0494
P 88-0495
P 88-0496
P 88-0497
P 88-0498
P 88-0499
P 88-0500
P 88-0501
P 88-0502
P 88-0503
P 88-0504
P 88-0505
P 88-0506
P 88-0507
P 88-0508
P 88-0509
P 88-0510
P 88-0511
P 88-0512
P 88-0513
P 88-0514
P 88-0515
P 88-0516
P 88-0517
P 88-0518
P 88-0519
P 88-0520
P 88-0521
P 88-0522
P 88-0523
P 88-0524
P 88-0525
P 88-0526
P 88-0528
P 88-0529
P 88-0530
P 88-0531
P 88-0532
P 88-0533
P 88-0534
P 88-0535
P 88-0536
P 88-0537
P 88-0538
P 88-0539
P 88-0540
P 88-0541
P 88-0542
P 88-0543
P 88-0544
P 88-0545
P 88-0546
P 88-0547
P 88-0548
P 88-0549
P 88-0550
P 88-0551
P 88-0552
P 88-0553
P 88-0554
P 88-0555
P 88-0556
P 88-0557
P 88-0558
P 88-0559
P 88-0560
P 88-0561
P 88-0562
P 88-0563
P 88-0564
P 88-0565
P 88-0566
P 88-0567
P 88-0568
P 88-0569
P 88-0570
P 88-0571
P 88-0572
P 88-0573
P 88-0574
P 88-0575
P 88-0576
P 88-0577
P 88-0578
P 88-0579
P 88-0580
P 88-0581
P 88-0582
P 88-0583
P 88-0584
P 88-0585
P 88-0586
P 88-0587
P 88-0588
P 88-0589
P 88-0590
P 88-0591
P 88-0592
P 88-0593
P 88-0594
P 88-0595
P 88-0596
P 88-0597
P 88-0598
P 88-0599
P 88-0600
P 88-0602
P 88-0603
P 88-0604
P 88-0605
P 88-0606
P 88-0607
P 88-0608
P 88-0609
P 88-0610
P 88-0611
P 88-0612
P 88-0613
P 88-0614
P 88-0615
P 88-0616
P 88-0617
P 88-0618
P 88-0619
P 88-0620
P 88-0621
P 88-0622
P 88-0623
P 88-0624
P 88-0625
P 88-0626
P 88-0627
P 88-0628
P 88-0629
P 88-0630
P 88-0631
P 88-0632
P 88-0633
P 88-0634
P 88-0635
P 88-0636
P 88-0637
P 88-0638
P 88-0639
P 88-0640
P 88-0641
P 88-0642
P 88-0643
P 88-0645
P 88-0646
P 88-0647
P 88-0648
P 88-0649
P 88-0650
P 88-0651
P 88-0652
P 88-0653
P 88-0654
P 88-0655
P 88-0656
P 88-0657
P 88-0658
P 88-0659
P 88-0660
P 88-0661
P 88-0662
P 88-0663
P 88-0664
P 88-0665
P 88-0666
P 88-0667
P 88-0668
P 88-0669
P 88-0670
P 88-0671
P 88-0672
P 88-0673
P 88-0674
P 88-0675
P 88-0676
P 88-0677
P 88-0678
P 88-0679
P 88-0680
P 88-0681
P 88-0682
P 88-0683
P 88-0684
P 88-0685
P 88-0686
P 88-0687
P 88-0688
P 88-0689
Y 88-0001
Y 88-0002
Y 88-0003
Y 88-0004
Y 88-0005
Y 88-0006
Y 88-0007
Y 88-0008
Y 88-0009
Y 88-0010
Y 88-0011
Y 88-0012
Y 88-0013
Y 88-0014
Y 88-0015
Y 88-0016
Y 88-0017
Y 88-0018
Y 88-0019
Y 88-0020
Y 88-0021
Y 88-0022
Y 88-0023
Y 88-0024
Y 88-0025
Y 88-0026
Y 88-0027
Y 88-0028
Y 88-0029
Y 88-0030
Y 88-0031
Y 88-0032
Y 88-0033
Y 88-0034
Y 88-0035
Y 88-0036
Y 88-0037
Y 88-0038
Y 88-0039
Y 88-0040
Y 88-0041
Y 88-0042
Y 88-0043
Y 88-0044
Y 88-0045
Y 88-0046
Y 88-0047
Y 88-0048
Y 88-0049
Y 88-0050
Y 88-0051
Y 88-0052
Y 88-0053
Y 88-0054
Y 88-0055
Y 88-0056
Y 88-0057
Y 88-0058
Y 88-0059
Y 88-0060
Y 88-0061
Y 88-0062
Y 88-0063
Y 88-0064
Y 88-0065
Y 88-0066
Y 88-0067
Y 88-0068
Y 88-0069
Y 88-0070
Y 88-0071
Y 88-0072
Y 88-0073
Y 88-0074
Y 88-0075
Y 88-0076
Y 88-0077
Y 88-0078
Y 88-0079
Y 88-0080
Y 88-0081
Y 88-0082
Y 88-0083
Y 88-0084
Y 88-0085
Y 88-0086
Y 88-0087
Y 88-0088
Y 88-0089
Y 88-0090
Y 88-0091
Y 88-0092
Y 88-0093
Y 88-0094
Y 88-0095
Y 88-0096
Y 88-0097
Y 88-0098
Y 88-0099
Y 88-0100
Y 88-0101
Y 88-0102
Y 88-0103
Y 88-0104
Y 88-0105

II. 87 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 83-0669
P 84-1182
P 84-1183
P 85-0216
P 85-0535
P 85-0536
P 85-0619
P 85-0718
P 85-0941
P 86-0065
P 86-0066
P 86-0067
P 86-0092
P 86-0294
P 86-0295
P 86-0592
P 86-1078
P 86-1189
P 86-1235
P 86-1356
P 86-1602
P 86-1603
P 86-1604
P 86-1607
P 87-0057
P 87-0058
P 87-0059
P 87-0068
P 87-0105
P 87-0197
P 87-0198
P 87-0199
P 87-0200
P 87-0201
P 87-0318
P 87-0323
P 87-0326
P 87-0548
P 87-0641
P 87-0642
P 87-0723
P 87-0770
P 87-0794
P 87-0930
P 87-0931
P 87-0963
P 87-0971
P 87-0973
P 87-1028
P 87-1041
P 87-1066
P 87-1104
P 87-1192
P 87-1226
P 87-1227
P 87-1273
P 87-1337
P 87-1379
P 87-1417
P 87-1436
P 87-1437
P 87-1471
P 87-1542
P 87-1546
P 87-1547
P 87-1548
P 87-1549
P 87-1555
P 87-1673
P 87-1676
P 87-1677
P 87-1679
P 87-1680
P 87-1694
P 87-1759
P 87-1760
P 87-1769
P 87-1770
P 87-1787
P 87-1813
P 87-1814
P 87-1830
P 87-1865
P 87-1872
P 87-1879
P 87-1881
P 87-1882

III. 775 Premanufacture Notices and Exemption Requests for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Has Been Added to the Inventory)

PMN No.

P 83-0770
P 84-0713
P 85-0676
P 85-0949
P 85-0976
P 85-1059
P 85-1189
P 86-0476
P 86-0564
P 86-0566
P 86-1054
P 86-1411
P 86-1419
P 86-1525
P 86-1573
P 86-1686
P 87-0180
P 87-0262
P 87-0293
P 87-0502
P 87-0516
P 87-0561
P 87-0586
P 87-0758
P 87-0760
P 87-0772
P 87-0844
P 87-0989
P 87-1036
P 87-1162
P 87-1292
P 87-1346
P 87-1359
P 87-1360
P 87-1361
P 87-1362
P 87-1363
P 87-1364
P 87-1365
P 87-1366
P 87-1367
P 87-1368
P 87-1369
P 87-1370
P 87-1371
P 87-1372
P 87-1373
P 87-1374
P 87-1375
P 87-1376
P 87-1377
P 87-1378
P 87-1380
P 87-1381
P 87-1382
P 87-1383
P 87-1384
P 87-1385
P 87-1386
P 87-1387
P 87-1388
P 87-1389
P 87-1390
P 87-1391
P 87-1392
P 87-1393
P 87-1394
P 87-1395
P 87-1396
P 87-1397
P 87-1398
P 87-1399
P 87-1400
P 87-1401
P 87-1402
P 87-1403
P 87-1404
P 87-1405
P 87-1406
P 87-1407
P 87-1408
P 87-1409
P 87-1410
P 87-1411
P 87-1412
P 87-1413
P 87-1414
P 87-1415
P 87-1416
P 87-1418
P 87-1419
P 87-1420
P 87-1421
P 87-1422
P 87-1423
P 87-1424
P 87-1425
P 87-1426
P 87-1427
P 87-1428
P 87-1429
P 87-1430
P 87-1431
P 87-1432
P 87-1433
P 87-1434
P 87-1435
P 87-1438
P 87-1439
P 87-1440
P 87-1441
P 87-1442
P 87-1443
P 87-1444
P 87-1445
P 87-1446
P 87-1447
P 87-1448
P 87-1449
P 87-1450
P 87-1451
P 87-1452
P 87-1453
P 87-1454
P 87-1455
P 87-1457
P 87-1458
P 87-1459
P 87-1460
P 87-1461
P 87-1462
P 87-1463
P 87-1464
P 87-1465
P 87-1466
P 87-1468
P 87-1469
P 87-1470
P 87-1472
P 87-1473
P 87-1474
P 87-1475
P 87-1476
P 87-1477
P 87-1478
P 87-1479
P 87-1480
P 87-1481
P 87-1482
P 87-1483
P 87-1485
P 87-1486
P 87-1487
P 87-1488
P 87-1489
P 87-1490
P 87-1491
P 87-1492
P 87-1493
P 87-1494
P 87-1495
P 87-1496
P 87-1497
P 87-1498
P 87-1499
P 87-1500
P 87-1501
P 87-1502
P 87-1503
P 87-1504
P 87-1505
P 87-1506
P 87-1507
P 87-1508
P 87-1509
P 87-1510
P 87-1511
P 87-1512
P 87-1513
P 87-1514
P 87-1515
P 87-1516
P 87-1517
P 87-1518
P 87-1519
P 87-1520
P 87-1521
P 87-1522
P 87-1523
P 87-1524
P 87-1525
P 87-1526
P 87-1527
P 87-1528
P 87-1529
P 87-1530
P 87-1531
P 87-1532
P 87-1533
P 87-1534
P 87-1535
P 87-1536
P 87-1537
P 87-1538
P 87-1539
P 87-1540
P 87-1541
P 87-1543
P 87-1544
P 87-1545
P 87-1550
P 87-1551
P 87-1552
P 87-1554
P 87-1556
P 87-1557
P 87-1558
P 87-1559
P 87-1560
P 87-1561
P 87-1562
P 87-1563
P 87-1564
P 87-1565
P 87-1566
P 87-1567
P 87-1568
P 87-1569
P 87-1570
P 87-1571
P 87-1572
P 87-1573
P 87-1574
P 87-1575
P 87-1576
P 87-1577
P 87-1578
P 87-1579
P 87-1580
P 87-1581
P 87-1582
P 87-1583
P 87-1584
P 87-1585
P 87-1586
P 87-1587
P 87-1588
P 87-1589
P 87-1590
P 87-1591
P 87-1592
P 87-1593
P 87-1594
P 87-1595
P 87-1596
P 87-1597
P 87-1598
P 87-1599
P 87-1600
P 87-1601
P 87-1602
P 87-1603
P 87-1604
P 87-1605
P 87-1606
P 87-1607
P 87-1608
P 87-1609
P 87-1610
P 87-1611
P 87-1612
P 87-1613
P 87-1614
P 87-1615
P 87-1616
P 87-1617
P 87-1618
P 87-1619
P 87-1620
P 87-1621
P 87-1622
P 87-1623
P 87-1624
P 87-1625
P 87-1626
P 87-1627
P 87-1628
P 87-1629
P 87-1630
P 87-1631
P 87-1632
P 87-1633
P 87-1634
P 87-1635
P 87-1636
P 87-1637
P 87-1638
P 87-1639
P 87-1640
P 87-1641
P 87-1642
P 87-1643
P 87-1644
P 87-1645
P 87-1646
P 87-1647
P 87-1648
P 87-1649
P 87-1650
P 87-1651
P 87-1652
P 87-1653
P 87-1654
P 87-1655
P 87-1656
P 87-1657
P 87-1658
P 87-1659
P 87-1660
P 87-1661
P 87-1662
P 87-1663
P 87-1664
P 87-1665
P 87-1666
P 87-1667
P 87-1668
P 87-1669
P 87-1670
P 87-1671
P 87-1672
P 87-1674
P 87-1675
P 87-1678
P 87-1681
P 87-1682
P 87-1683
P 87-1684
P 87-1685
P 87-1686
P 87-1687
P 87-1688
P 87-1689
P 87-1690
P 87-1691
P 87-1692
P 87-1693
P 87-1695
P 87-1696
P 87-1697
P 87-1698
P 87-1699
P 87-1700
P 87-1701
P 87-1702
P 87-1703
P 87-1704
P 87-1705
P 87-1706
P 87-1707
P 87-1708
P 87-1709
P 87-1713
P 87-1715
P 87-1717
P 87-1722
P 87-1730
P 87-1732
P 87-1735
P 87-1736
P 87-1737
P 87-1738
P 87-1739
P 87-1744

P 87-1745
P 87-1747
P 87-1748
P 87-1749
P 87-1750
P 87-1751
P 87-1752
P 87-1753
P 87-1754
P 87-1755
P 87-1756
P 87-1757
P 87-1758
P 87-1761
P 87-1762
P 87-1763
P 87-1764
P 87-1765
P 87-1766
P 87-1767
P 87-1768
P 87-1771
P 87-1772
P 87-1773
P 87-1774
P 87-1775
P 87-1776
P 87-1777
P 87-1778
P 87-1779
P 87-1780
P 87-1781
P 87-1782
P 87-1783
P 87-1786
P 87-1788
P 87-1789
P 87-1790
P 87-1791
P 87-1792
P 87-1793
P 87-1794
P 87-1795
P 87-1796
P 87-1797
P 87-1798
P 87-1799
P 87-1800
P 87-1801
P 87-1802
P 87-1803
P 87-1804
P 87-1805
P 87-1806
P 87-1807
P 87-1808
P 87-1809
P 87-1810
P 87-1811
P 87-1812
P 87-1815
P 87-1816
P 87-1817
P 87-1818
P 87-1819
P 87-1820
P 87-1821
P 87-1822
P 87-1823
P 87-1824
P 87-1825
P 87-1826
P 87-1827
P 87-1828
P 87-1829
P 87-1831
P 87-1832
P 87-1833
P 87-1834
P 87-1835
P 87-1836
P 87-1837
P 87-1838
P 87-1839
P 87-1840
P 87-1841
P 87-1842
P 87-1843
P 87-1844
P 87-1845
P 87-1846
P 87-1847
P 87-1848
P 87-1849
P 87-1850
P 87-1851
P 87-1852
P 87-1853
P 87-1854
P 87-1855
P 87-1856
P 87-1857
P 87-1858
P 87-1859
P 87-1860
P 87-1861
P 87-1862
P 87-1863
P 87-1864
P 87-1866
P 87-1867
P 87-1868
P 87-1869
P 87-1870
P 87-1871
P 87-1873
P 87-1874
P 87-1875
P 87-1876
P 87-1880
P 87-1883
P 87-1884
P 87-1885
P 87-1886
P 87-1887
P 87-1888
P 87-1889
P 87-1890
P 87-1891
P 87-1892
P 87-1895
P 87-1896
P 87-1897
P 87-1898
P 87-1899
P 87-1900
P 87-1901
P 87-1902
P 87-1903
P 87-1904
P 88-0001
P 88-0002
P 88-0003
P 88-0005
P 88-0006
P 88-0007
P 88-0008
P 88-0009
P 88-0010
P 88-0011
P 88-0012
P 88-0013
P 88-0014
P 88-0015
P 88-0016
P 88-0017
P 88-0018
P 88-0019
P 88-0020
P 88-0021
P 88-0022
P 88-0023
P 88-0024
P 88-0025
P 88-0026
P 88-0027
P 88-0028
P 88-0029
P 88-0030
P 88-0031
P 88-0032
P 88-0033
P 88-0034
P 88-0035
P 88-0036
P 88-0037
P 88-0038
P 88-0039
P 88-0040
P 88-0041
P 88-0042
P 88-0043
P 88-0044
P 88-0045
P 88-0046
P 88-0047
P 88-0048
P 88-0050
P 88-0051
P 88-0052
P 88-0053
P 88-0054
P 88-0055
P 88-0056
P 88-0057
P 88-0060
P 88-0061
P 88-0062
P 88-0064
P 88-0065
P 88-0066
P 88-0067
P 88-0068
P 88-0069
P 88-0070
P 88-0071
P 88-0072
P 88-0073
P 88-0074
P 88-0075
P 88-0076
P 88-0077
P 88-0078
P 88-0080
P 88-0081
P 88-0082
P 88-0084
P 88-0085
P 88-0086
P 88-0087
P 88-0088
P 88-0089
P 88-0090
P 88-0091
P 88-0092
P 88-0093
P 88-0094
P 88-0095
P 88-0096
P 88-0097
P 88-0098
P 88-0099
P 88-0100
P 88-0101
P 88-0102
P 88-0103
P 88-0104
P 88-0105
P 88-0106
P 88-0107
P 88-0108
P 88-0109
P 88-0110
P 88-0111
P 88-0112
P 88-0113
P 88-0114
P 88-0115
P 88-0116
P 88-0117
P 88-0118
P 88-0119
P 88-0120
P 88-0121
P 88-0122
P 88-0123
P 88-0124
P 88-0125
P 88-0126
P 88-0128
P 88-0130
P 88-0131
P 88-0133
P 88-0135
P 88-0136
P 88-0137
P 88-0139
P 88-0140
P 88-0141
P 88-0142
P 88-0143
P 88-0144
P 88-0145
P 88-0146
P 88-0147
P 88-0148
P 88-0149
P 88-0150
P 88-0151
P 88-0152
P 88-0153
P 88-0154
P 88-0155
P 88-0158
P 88-0159
P 88-0160
P 88-0161
P 88-0162
P 88-0163
P 88-0164
P 88-0165
P 88-0166
P 88-0167
P 88-0168
P 88-0169
P 88-0170
P 88-0171
P 88-0173
P 88-0174
P 88-0175
P 88-0176
P 88-0178
P 88-0184
P 88-0185
P 88-0186
P 88-0188
P 88-0189
Y 87-0165
Y 87-0226
Y 87-0253
Y 87-0254
Y 87-0255
Y 87-0256
Y 87-0257
Y 87-0258
Y 87-0259
Y 87-0260
Y 87-0261
Y 87-0263
Y 87-0264
Y 87-0265
Y 88-0001
Y 88-0002
Y 88-0003
Y 88-0004
Y 88-0005
Y 88-0006
Y 88-0007
Y 88-0008
Y 88-0009
Y 88-0010
Y 88-0011
Y 88-0012
Y 88-0013
Y 88-0014
Y 88-0015
Y 88-0016
Y 88-0017
Y 88-0018
Y 88-0019
Y 88-0020
Y 88-0025
Y 88-0026
Y 88-0027
Y 88-0028
Y 88-0029
Y 88-0030
Y 88-0031
Y 88-0032
Y 88-0033
Y 88-0034
Y 88-0035
Y 88-0036
Y 88-0037
Y 88-0038
Y 88-0039
Y 88-0040
Y 88-0041
Y 88-0042
Y 88-0043
Y 88-0044
Y 88-0045
Y 88-0046
Y 88-0047
Y 88-0048
Y 88-0049
Y 88-0050
Y 88-0051
Y 88-0052
Y 88-0053
Y 88-0054
Y 88-0055
Y 88-0056
Y 88-0057
Y 88-0058
Y 88-0059
Y 88-0060
Y 88-0061
Y 88-0063
Y 88-0064
Y 88-0065
Y 88-0066
Y 88-0067
Y 88-0068
Y 88-0069
Y 88-0070
Y 88-0071
Y 88-0073
Y 88-0074
Y 88-0076
Y 88-0077
Y 88-0080
Y 88-0081
Y 88-0082
Y 88-0083
Y 88-0084
Y 88-0085
Y 88-0086
Y 88-0087
Y 88-0088
Y 88-0089
Y 88-0090

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 80-0010	G Substituted ketone pyran	Sept. 9, 1987.
P 83-0471	G Metal salt of saccharin	Nov. 24, 1987.
P 83-0660	G Perfluorinated hydrocarbon	Aug. 1, 1983.
P 84-0116	G Substituted aromatic polymer	Sept. 14, 1987.
P 86-0056	G Hydrocarbon resin, hydrogenated	Nov. 17, 1987.
P 86-0061	G Hydrocarbon resin	Nov. 10, 1986.
P 86-0116	G Esterified aromatic carboxylic acid	June 24, 1986.
P 86-0235	G Aromatic isocyanate-terminated polyether polymer	Sept. 23, 1987.
P 86-0571	Alkenes reaction products with 2,5-furandione substituted alkyl amines	Nov. 11, 1987.
P 86-0572	G Alkenes reaction products with furandione and substituted alkyl amines	Nov. 13, 1987.

IV. 87 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-0639	G Copolymers of fluorolefin and vinyl ethers	July 15, 1986.
P 86-1169	G Polyester modified epoxy resin	Apr. 23, 1987.
P 86-1170	G Polyamide/acrylic copolymer	Apr. 3, 1987.
P 86-1218	G Benzenedicarboxylic acid, substituted	Sept. 19, 1987.
P 86-1273	G Low molecular weight polybutadiene oil containing carboxyl groups	Sept. 12, 1987
P 86-1502	G Polyester-imide resin	Apr. 8, 1987.
P 86-1739	G Acrylylalkyl substituted benzenepolyolcarboxylic acid derivative	Dec. 11, 1987.
P 87-0080	G Cumene derivative	Feb. 25, 1987.
P 87-0093	G Alkylene diol alkyl ether	July 27, 1987.
P 87-0109	G Perfluoroalkyl ester	Jan. 22, 1987.
P 87-0125	Series isomers of undetermined structure	Jan. 26, 1987.
P 87-0158	4-ethenylphenol acetate	Aug. 17, 1987.
P 87-0161	G Disubstituted quinoline hydrochloride	Apr. 1, 1987.
P 87-0236	G Chromate,(1-),bis((5-chloro-2-hydroxyphenyl)azo-2-naphtaleneolato(2-))-,hydrogen, compound with 1-tetradecanamine(1:1)	June 19, 1987.
P 87-0259	G Hydrolyzable alkylsilane	Oct. 23, 1987.
P 87-0309	Benzophenonetetra-carboxylic acid	Aug. 27, 1987.
P 87-0328	G Piperidinyl triazine derivative	Dec. 8, 1987.
P 87-0330	Aluminum,L	Oct. 5, 1987.
P 87-0332	G Substituted benzenesulfonamide	Sept. 18, 1987.
P 87-0334	G Substituted benzenesulfonyl chloride	Do.
P 87-0366	Polymer of trichloromethylsilane; dichlorodimethylsilane; and trichlororphenylsilane	Nov. 14, 1987.
P 87-0368	G Substituted triphenodioxazine	Sept. 9, 1987.
P 87-0420	G Alkyl amine polyether	Nov. 22, 1987.
P 87-0447	G Perfluoroelastomer	Nov. 4, 1987.
P 87-0477	G Aliphatic polyester	Oct. 5, 1987.
P 87-0494	G Isocyanate modified alkyd resin	Aug. 6, 1987.
P 87-0537	Polymerized cashew nutshell liquid	June 2, 1987.
P 87-0538	....do	Do.
P 87-0601	G Aromatic polymeric polyester	May 8, 1987.
P 87-0754	G Modified polyacrylate polymer	Nov. 30, 1987.
P 87-0939	G Organofunctional polysiloxane	Sept. 9, 1987.
P 87-0972	G Waterborne urethane-acrylic copolymer	Sept. 10, 1987.
P 87-1035	G Aromatic sulfonate polymer salt	Sept. 9, 1987.
P 87-1061	G Zirconium (4+) alkanolamine polyol complex	Sept. 3, 1987.
P 87-1076	Polyetheramide based on nylon 6-monomers	Nov. 12, 1987.
P 87-1097	G Dialkyl dimethyl amine graft copolymer with ethoxylated cellulose	Sept. 9, 1987.
P 87-1126	1,1'-ethylene-2,2' bipyridylium dibromide	Dec. 10, 1987.
P 87-1152	G Organopolysiloxane containing epoxy group	Oct. 2, 1987.
P 87-1172	G Acetyldiazine	Sept. 4, 1987.
P 87-1178	G Modified Organopolysiloxane	Sept. 8, 1987.
P 87-1189	G Benzenesulfonic acid, alkyd derivation	Sept. 25, 1987.
P 87-1207	G Sulfur/olefin adduct	Sept. 28, 1987.
P 87-1243	Ethanol,2-Phenoxy, formate	Nov. 19, 1987.
P 87-1245	G Benzene sulfonic acid, alkyl derivatives, calcium salts	Sept. 25, 1987.
P 87-1298	G Alkoxyislane	Sept. 9, 1987.
P 87-1305	G Crosslinked ethylene interpolymer	Sept. 23, 1987.
P 87-1307	G Epoxy alkyl diol	Nov. 23, 1987.
P 87-1324	G Bicyclic tertiary alcohol	Oct. 2, 1987.
P 87-1325	G Bicyclic olefin	Do.
P 87-1326	G Tricyclic epoxide	Do.
P 87-1328	G Bicyclic ketone	Do.
P 87-1329	G Nitroaromatic alkanoic acid, derivative	Nov. 18, 1987.
P 87-1330	G 1,4 Benzenedicarbonyl dichlororide polymer with bis(4-phenoxyphenyl methanole) and substituted benzene	Sept. 25, 1987.
P 87-1336	G Styrenated copolymer alkyd resin	Sept. 27, 1987.
P 87-1341	G Divalent metal salt of an acid	Nov. 13, 1987.
P 87-1363	G Metal alkyl compounds	Nov. 30, 1987.
P 87-1418	G Acetate of modified fatty acid polyamine condensate	Nov. 23, 1987.
P 87-1419	G Propoxylated formaldehyde resin	Do.
P 87-1420	G Cyanoacrylate ester polymer	Oct. 13, 1987.
P 87-1454	Turpentine oil, reaction products with phenol	Nov. 30, 1987.
P 87-1455	G Polyalkoxylated quaternary ammonium compound	Do.
P 87-1513	Olefin terminated polythioether polymer	Nov. 5, 1987.
P 87-1526	Mercaptan terminated polythioether polymer	Nov. 25, 1987
P 87-1563	G Mixed metal oxide compound	Dec. 6, 1987.
P 87-1593	G Potassium alcoholates	Nov. 16, 1987.
P 87-1644	G Aryl alkylarylpolyamide resin	Dec. 2, 1987.
P 87-1645	G Aryl alkylpolyamide resin	Dec. 4, 1987.
P 87-1663	G Oil modified high solids aliphatic urethane	Nov. 29, 1987.
P 87-1683	G Acrylic terpolymer	Nov. 30, 1987.
Y 86-0200	G Acrylic polymer	Nov. 24, 1987.
Y 87-0022	G Polyester resin of aryl of dicarboxylic acids and alkane diols	Apr. 22, 1987.
Y 87-0024	G Polyacrylate	Sept. 1, 1987.
Y 87-0091	Diphenylmethane-4,4-diisocyanate, polymer with 1,3-butanediol and (dimethyl polysiloxane, 6-hydroxy-4-oxahenyl terminated) and (hexanedioic acid polymer with 1,4-butadienediol and 1,6-hexanediol).	Mar. 10, 1987.
Y 87-0182	G Styrene, acrylic polymer	July 23, 1987.
Y 87-0210	G Glutaric adipic, and terephthalic polyesters with neopentyl glycol ethylene glycol, and isodecanol	Sept. 19, 1987.
Y 87-0224	G Alkyd resin	Sept. 11, 1987.
Y 88-0016	G Substituted aryl dicarboxylic acid/diol polymer	Nov. 5, 1987.

V. 129 Premanufacture Notices for Which the Period Has Been Suspended

PMN No.

P 85-0901
P 86-1078
P 87-0758
P 87-0963
P 87-1028
P 87-1041
P 87-1104
P 87-1123
P 87-1212
P 87-1213
P 87-1226
P 87-1227
P 87-1385
P 87-1436
P 87-1437
P 87-1440
P 87-1441
P 87-1456
P 87-1464
P 87-1465
P 87-1468
P 87-1471
P 87-1484
P 87-1499
P 87-1531
P 87-1541
P 87-1542
P 87-1546
P 87-1547
P 87-1548
P 87-1549
P 87-1553
P 87-1555
P 87-1565
P 87-1574
P 87-1628
P 87-1636
P 87-1657
P 87-1673
P 87-1676
P 87-1677
P 87-1679
P 87-1680
P 87-1710
P 87-1711
P 87-1712
P 87-1714
P 87-1716
P 87-1718
P 87-1719
P 87-1720
P 87-1721
P 87-1723
P 87-1724
P 87-1725
P 87-1726
P 87-1727
P 87-1728
P 87-1729
P 87-1731
P 87-1733
P 87-1734
P 87-1740
P 87-1741
P 87-1742
P 87-1743
P 87-1746
P 87-1760
P 87-1769
P 87-1770
P 87-1784
P 87-1785
P 87-1813
P 87-1814
P 87-1830
P 87-1831
P 87-1832
P 87-1865
P 87-1877
P 87-1878
P 87-1879
P 87-1881
P 87-1882
P 87-1884
P 87-1893
P 87-1894
P 87-1900
P 88-0049
P 88-0058
P 88-0060
P 88-0063
P 88-0083
P 88-0132
P 88-0172
P 88-0177
P 88-0180
P 88-0195
P 88-0267
P 88-0280
P 88-0345
P 88-0352
P 88-0372
P 88-0441
Y 87-0254
Y 87-0264
Y 87-0265
Y 88-0003
Y 88-0006
Y 88-0007
Y 88-0008
Y 88-0009
Y 88-0012
Y 88-0013
Y 88-0015
Y 88-0031
Y 88-0033
Y 88-0042
Y 88-0043
Y 88-0044
Y 88-0047
Y 88-0072
Y 88-0073
Y 88-0075
Y 88-0076
Y 88-0077
Y 88-0078
Y 88-0079
Y 88-0091
Y 88-0092

[FR Doc. 88-17340 Filed 9-1-88; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
September 2, 1988

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting and Recombinant DNA Research; Proposed Actions Under Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892, on October 3, 1988, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines;

Proposed major actions;

Human gene therapy protocol;

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

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.

Dated: August 23, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–19869 Filed 9–1–88; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on October 3, 1988. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue a decision on these proposals in accord with the NIH Guidelines.

DATE: Comments received by September 23, 1988, will be reproduced and distributed to the RAC for consideration at its October 3, 1988, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Proposed Amendment of Section I–C

Section I–C of the NIH Guidelines currently reads as follows:

I–C General Applicability

The Guidelines are applicable to all recombinant DNA research within the United States or its territories which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from the National Institutes of Health (NIH). This includes research performed by the NIH directly.

An individual receiving support for research involving recombinant DNA must be associated with or sponsored by an institution that can and does assume the responsibilities assigned in these Guidelines.

The Guidelines are also applicable to projects done abroad if they are supported by NIH funds. If the host country, however, has established rules for the conduct of recombinant DNA projects, then a certificate of compliance with those rules may be submitted to NIH in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

In a letter dated January 9, 1987, Mr. Edward Lee Rogers, Counsel for the Foundation on Economic Trends, and Mr. Jeremy Rifkin, Foundation on Economic Trends, Washington, DC, proposed that the following text be inserted after the first sentence of the third paragraph of Section I–C:

For purposes of the preceding sentence, the term "project" includes any research or development of the recombinat organism or other product or process in question, including all such work that is reasonably forseeable when the NIH support is received. NIH support includes both money grants and any type of in-kind support, including research conducted directly by NIH, supplies, equipment, the use of facilities, and biological research materials. NIH support has been given where the source of funds or in-kind support is, directly or indirectly, the NIH.

This proposed amendment of Section I–C was initially published for comment in the **Federal Register** of March 11, 1987 (52 FR 7525), prior to a scheduled RAC meeting on June 15, 1987. The June 15, 1987, meeting was postponed and rescheduled on September 21, 1987. Accordingly, this proposed amendment was published again for comment in the **Federal Register** of August 11, 1987 (52 FR 29800).

After extensive discussion at its meeting on September 21, 1987, the RAC voted to establish a working group to make recommendations regarding international projects and to report back to the full RAC.

A Working Group on International Projects met at the NIH on February 1, 1988. After extensive discussion, the working group voted seven in favor, none opposed, and no abstentions that the following proposed revision of the last paragraph of Section I–C be published for comment:

The NIH Guidelines are also applicable: (1) to projects done abroad if they are supported by NIH funds or (2) to research done abroad if it involves deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds and the research is a direct extension of the development process. If the host country, however, has established rules for the conduct of recombinant DNA projects then a written assurance of compliance with those rules

may be submitted to NIH in lieu of compliance with the NIH Guidelines. Alternatively, if the host country does not have such rules, written acceptance by an appropriate government office of the host country is necessary in lieu of compliance with the NIH Guidelines. The NIH reserves the right to withhold funding if the safety practices to be employed abroad are not reasonably consistent with the NIH Guidelines.

After extensive discussion of this proposed amendment of Section I–C and attempts to draft revised language, the RAC recommended that the many issues raised be referred back to another working group for further consideration.

A Working Group on International Projects met at the NIH on August 15, 1988. After extensive discussion, the working group recommended that the following proposed revision of the last paragraph of Section I–C be published for comment:

The NIH Guidelines are also applicable to recombinant DNA projects done abroad:

1. if they are supported by NIH funds; or

2. if they involve deliberate release into the environment or testing in humans of materials containing recombinant DNA developed with NIH funds, and if the institution that developed those materials sponsors or participates in those projects. Participation includes research collaboration or contractual agreements, but not mere provision of research materials.

If the host country has established rules for the conduct of recombinant DNA projects, then the project must be in compliance with those rules. If the host country does not have such rules, the proposed project must be reviewed by an NIH approved IBC or equivalent review body and accepted in writing by an appropriate national governmental authority. The safety practices to be employed abroad must be reasonably consistent with the NIH Guidelines.

II. Human Gene Transfer Protocol

The RAC will consider a human gene transfer protocol submitted by Drs. Steven A. Rosenberg, R. Michael Blaese, and W. French Anderson of the National Institutes of Health to mark tumor infiltrating lymphocytes (TIL) and to study their distribution and survival in the body. The proposal was initially reviewed by the RAC Human Gene Therapy Subcommittee at a meeting on July 29, 1988.

III. Proposed Amendment of Section I–B

Dr. Anne Vidaver of the University of Nebraska and a member of the RAC has proposed that the following paragraph regarding transposons be added to Section I–B, Definition of Recombinant DNA Molecules:

Unmodified transposons (wild-type) that become inserted into a genome, even if carried by a recombinant vector or plasmid, are not subject to these guidelines. For example, it is common to use vectors that either are naturally unstable (suicide vector) in a desired host or that can be rendered unstable by manipulating physiological conditions. In the process of suicide (inability of the vector to replicate), transposon transfer may occur. This process is not considered recombinant DNA.

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.

Dated: August 30, 1988.

James C. Hill,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 88–20047 Filed 9–1–88; 8:45 am]

BILLING CODE: 4140–01–M

federal register

Friday
September 2, 1988

Part VII

Department of Labor

Employment and Training Administration

Apprenticeship 2000—Summary of Comments; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Apprenticeship 2000, Summary of Comments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; summary of comments.

SUMMARY: The Department of Labor's Employment and Training Administration is conducting a comprehensive review of the apprenticeship concept to determine its role in meeting America's future needs for skilled workers. A major component of this review is a public dialogue. The Employment and Training Administration has requested and received comment on five issues surrounding the apprenticeship review. Following is a report containing a summary and analysis of written comment and public testimony received in response to the request for public input.

FOR FURTHER INFORMATION CONTACT: James D. Van Erden, Director, Bureau of Apprenticeship and Training, Office of Job Training Programs, Employment and Training Administration. Telephone: (202) 535–0540 (this is not a toll-free number).

Signed at Washington, DC, this 29th day of August, 1988.

Roberts T. Jones,

Acting Assistant Secretary of Labor for Employment and Training.

Apprenticeship 2000—Report of Public Comments

Background

In December 1987, the Department of Labor launched the Apprenticeship 2000 initiative with the publication of an issue paper in the **Federal Register**, 52 FR 45904 (December 2, 1987). The purpose of this initiative is to review the apprenticeship concept to determine its future role in meeting America's needs for a skilled work force.

The basic premise of the initiative is that scrutiny should be given to the apprenticeship concept of structured on-the-job training combined with related classroom instruction, and serious consideration given to increasing the role of apprenticeship in preparing workers for skilled jobs. This is a concept which holds potential for meeting both the needs of employers in industries facing skill shortages as well as the needs of targeted populations, such as workers who may periodically require retraining or upgrading, dislocated workers, or the at risk youth population.

The outcome of the review will be a comprehensive report of findings and recommendations to be implemented over the next several years. These recommendations may result in administrative, regulatory, and possibly, legislative changes.

The apprenticeship review combines a public dialogue with a research program that includes both short and longer term research projects. The public dialogue began with the publication of the issue paper that identified five issues surrounding the review and possible expansion of the apprenticeship concept and invited public comment. These five issues are:

- Should/can the apprenticeship concept be broadened to all industries?
- What should be the limitations or parameters, in terms of occupations, of an expanded apprenticeship effort?
- What should be the delivery system for an expanded apprenticeship system?
- What should be the role of government in an expanded apprenticeship program?
- How can apprenticeship be more effectively linked to the education system?

Publication of the issue paper was followed by three public meetings held in February in San Francisco, Chicago, and Washington, DC. The meetings were announced in the **Federal Register**, 53 FR 961 (January 14, 1988), and the public was invited to attend and testify on these issues.

Analytical Approach

As of July 1, there were 310 respondents to the Apprenticeship 2000 issue paper. The analysis which follows was undertaken to arrive at a general understanding of how these respondents viewed the five issues and to gather a sense of their opinions on related concerns.

Persons interested in commenting had the opportunity to do so by letter or in person at one of the public meetings. Some did both, and their comments were treated as one submission.

Several organizations or associations were represented, at different meetings or by letter, by more than one individual. The general rule in this analysis was to treat such comments as separate submissions.

For purposes of this analysis, each submission was assigned to a respondent category to indicate what major interest was being represented. The major respondent groups were: Business and Industry; Labor Unions; Joint Apprenticeship and Training Committees; Government, including Federal, State and local, except education; Education, including governmental education agencies; and Public/Special Interest Groups.

The assignment of respondents to a particular group was based primarily on the letterhead for written responses and, for the public meetings, on how respondents identified themselves. Respondents who identified themselves in several ways, e.g., as an employer and a representative of an association, were assigned to a category based upon the reviewer's judgment of the strength of the identification with one group or another.

The responses were reviewed against the five basic issues. Each of the five issues was assigned key words which were used to match the responses to the issues. For example, Issue 1 was tracked by the key words "expand," "study," "limited expansion," "do not expand," and "no response." Key words were also assigned to each of the other four issues. The key words used in this analysis are listed in Appendix A. Additional specific suggestions made by respondents and other significant comments relating to the issues were also captured and incorporated into the analysis.

The key words were not, for the most part, mutually exclusive. A respondent, in voicing an opinion or suggesting one approach, did not necessarily reject the opinions or alternatives represented by other key words. Many respondents included the thoughts embodied in several key words in their opinions; each was separately recorded, producing more total opinions than total respondents. Because respondents frequently had several opinions or suggestions on a given issue, most of the analysis and most of the accompanying charts use opinions, and not respondents, as the basis for analysis. However, in some cases, it was both desirable and possible to report on the percent of respondents who addressed a particular issue. The narrative and the charts indicate whether the base is respondents or opinions.

Not all of the 310 respondents addressed each of the five issues. In these cases, a "No Response" code was used. The "No Response" codes were backed out of the equation so that the analysis would show opinions as a percent of those respondents who specifically addressed an issue.

Many people responded quite broadly to some or all of the issues, or responded only indirectly. Thus, the analysis of the opinions cannot be a precise count, but is instead an

indication of the relative frequency of the views expressed by respondents.

The comments were reviewed and coded by a review team of several staff from the Bureau of Apprenticeship and Training who among them possess a mix of experience with apprenticeship programs and other employment and training programs. Initially, a sample of letters and testimony was read and coded independently by each member of the team. The key words that each used to track opinions were compared and discussed by the review team to make sure that each member conducted the review from the same understanding of the key words. This procedure was undertaken to produce as consistent and objective a review as possible.

Respondents

Figure 1 shows the number of respondents in each of the six respondent groups and provides a graphic illustration of the distribution of the 310 respondents among the groups. Figure 2 shows the percentage of total respondents represented by each of these categories.

BILLING CODE 4510-30-M

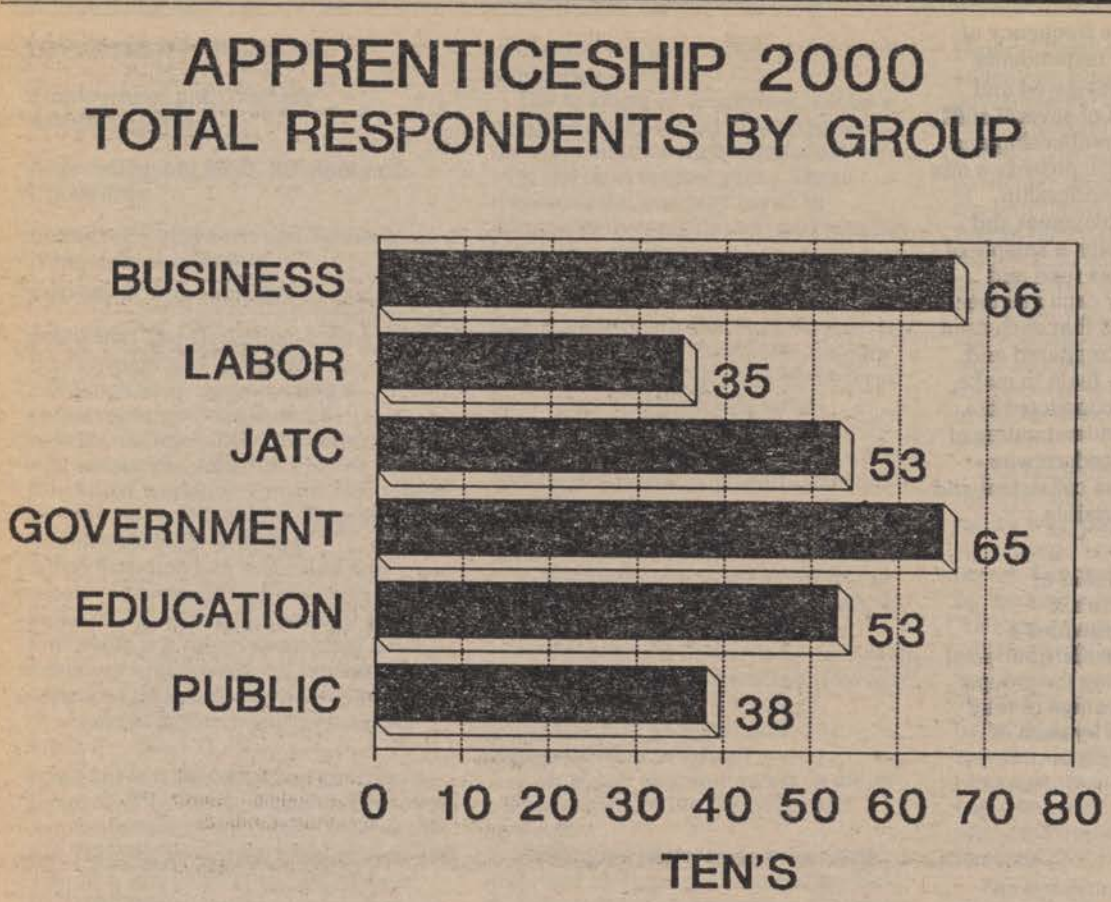

APPRENTICESHIP 2000
TOTAL RESPONDENTS BY GROUP
BUSINESS
LABOR
JATC
GOVERNMENT
EDUCATION
PUBLIC
66
35
53
65
53
38
0 10 20 30 40 50 60 70 80
TEN'S

FIGURE 1

APPRENTICESHIP 2000
TOTAL RESPONDENTS

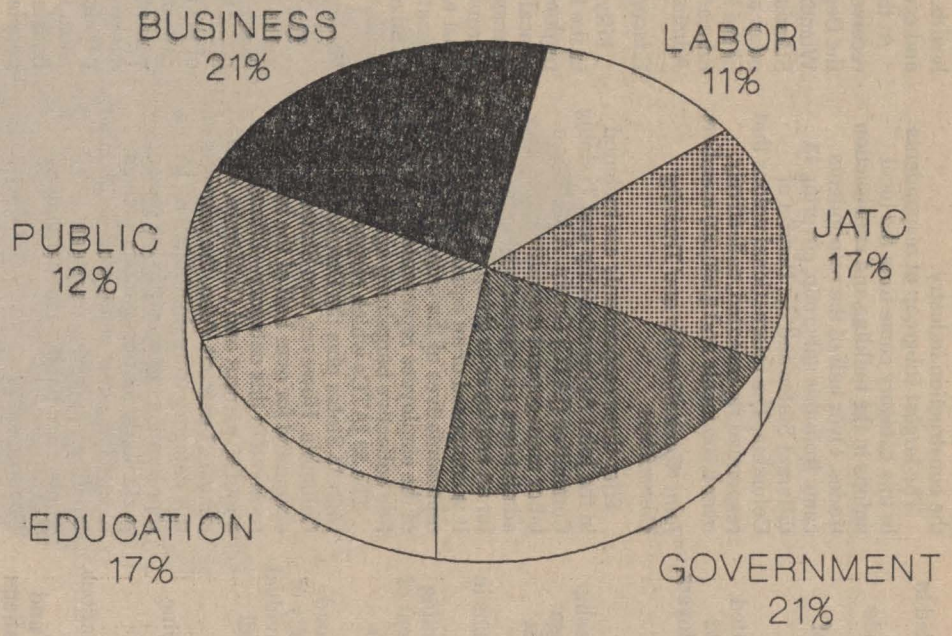


FIGURE 2

BILLING CODE 4510-30-C

Business and Industry

Sixty-six respondents are included in the Business and Industry Group. Respondents in this category include both individual employers and associations representing groups of employers.

Thirty-eight percent of the respondents in this group represented associations while the remaining 62 percent were from individual employers, ranging from small firms to large corporations. In addition to the construction and building trades industry, the traditional apprenticeship core, there was substantial response from employers and associations in fields other than the construction industry. Employers and associations in these other industries such as transportation, manufacturing, printing and utilities accounted for 60 percent of the total respondents in this group.

The range of respondents in the Business and Industry Group is broad, and together they represent a variety of interests in the private sector. Individual employers ranged in size from small local firms employing less than 50 persons to large national and multinational corporations employing many thousands of workers.

Respondents in the association subgroup included national associations, regional or statewide divisions or affiliates of national associations, and local associations. Several associations each represented well over 3,000 employers while two of the larger associations represented 33,000 and 135,000 employers.

Labor Unions

Thirty-five respondents are included in the Labor Union Group. Respondents in this category include both international unions and local unions. About 71 percent of the responses came from international and local unions representing the construction industry, and the remaining 29 percent came from international and local unions outside the construction industry.

The largest subgroup of respondents in this category came from the local unions in the building and construction trades. Over half of the respondents came from this subgroup, covering 13 different States and the District of Columbia. The international unions that responded represented, collectively, over 6,600 locals and 5,660,000 members.

Joint Apprenticeship and Training Committees

Fifty-three respondents are included in the Joint Apprenticeship and Training Committee (JATC) Group. A JATC is a labor management committee that administers an apprenticeship program for an employer or group of employers. It is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

The 53 JATCs which responded came from 14 States plus the District of Columbia. However, two States accounted for over half of the responses received in this category—Illinois, with about 30 percent and California, with almost 21 percent. Also, the responses in this category were dominated by JATCs representing the construction industry—particularly for occupations such as electrician, sheet metal worker, plumber, pipefitter, operating engineer, ironworker, painter and carpenter.

Government

Sixty-five respondents are included in the Government Group. Government agencies representing "education" were excluded from this group because the Education Group includes both public and private education institutions.

Seventy-five percent of the responses came from State governments representing 31 States plus Puerto Rico. While most of the responses received from State governments came from the offices of the State Labor Commissioner or the State Secretary of Labor, other State interests were included among the respondents, including corrections, health, transportation, human services, and economic development.

At the Federal level, responses were received from other components within the Department of Labor such as the Women's Bureau and the Employment Standards Administration, and from other agencies such as the Department of the Navy, the U.S. Army Continuing Education System and the Veterans Administration.

Education

Fifty-three respondents are included in the Education Group. Over half of the responses were received from public educational institutions which included 15 responses from institutions of higher learning. Of the remaining respondents, most were from State and local educational agencies, State Departments of Education and local Boards of Education.

Public/Special Interest Group

Thirty-eight respondents are included in the Public/Special Interest Group. Associations representing special interest groups accounted for 60 percent of the responses received in this category. A diverse range of interests was represented by respondents in this subgroup including the elderly, retired persons, women, nurses, and children. It should be noted that one association boasts a membership of 24,000,000 people. Other respondents in this group were individuals.

Analysis of Opinions

Issue #1: Should/Can the Apprenticeship Concept Be Broadened to All Industries?

A large percentage of respondents (79 percent) addressed this basic issue, and they expressed 255 opinions on broadening the apprenticeship concept. Figure 3 shows that the great majority of the opinions were favorable to expansion.

BILLING CODE 4510-30-M

EXPANSION OF APPRENTICESHIP
TOTAL OPINIONS

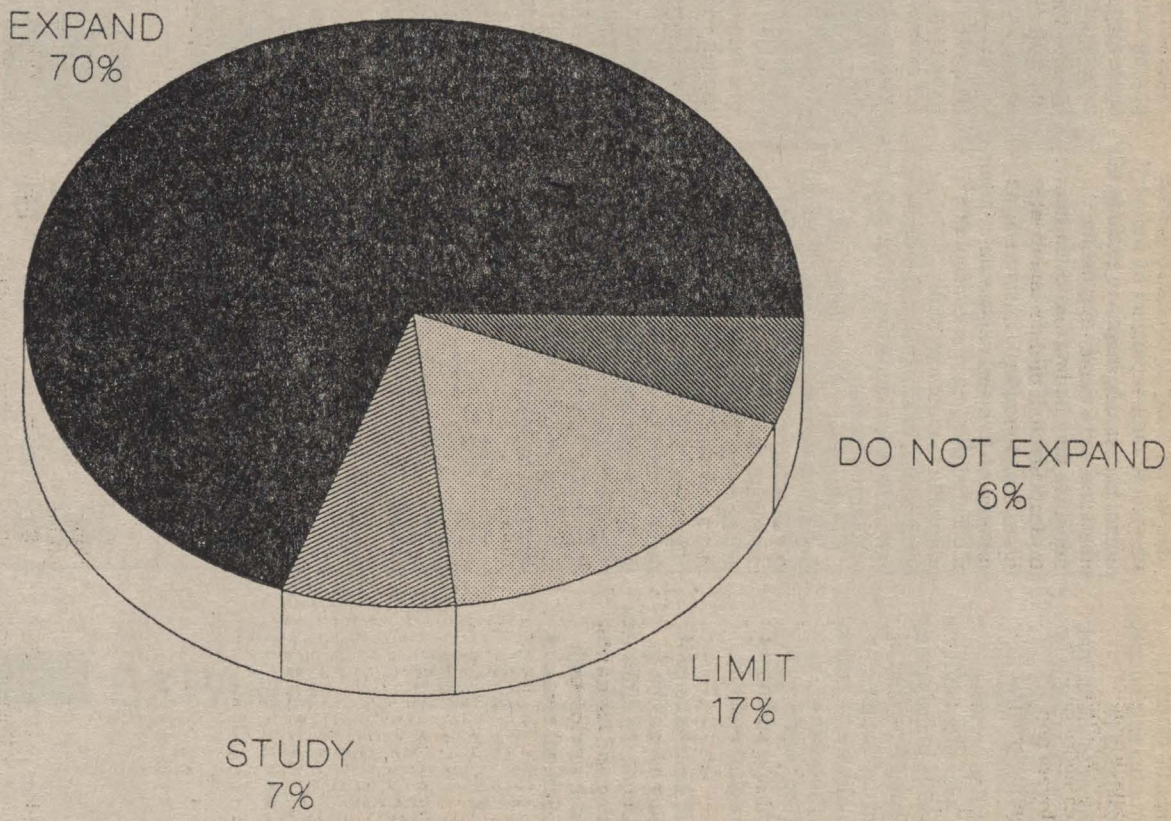


FIGURE 3

BILLING CODE 4510-30-C

Of these 255 opinions, 94 percent believed that the apprenticeship concept could or should be expanded to additional occupations or to additional industries. Those who were in favor of expansion were counted in three categories: "expand", "limit", and "study". Although the line between "expand" and "limit" was often difficult to discern, it was possible to draw some broad distinctions. Thus, 70 percent of the opinions endorsed expansion without significant qualifiers; 17 percent supported expansion, but with limitations; and 7 percent were supportive but thought that additional study was needed to define suitable industries.

Of those who would limit expansion, some suggested limiting expansion to specific industries. Among the industries suggested were banking and insurance, trucking, petrochemical, service, high tech and electronics, Federal agencies, and health care.

However, many, if not most of those who would limit expansion by industry, did not necessarily intend to exclude all others but were simply suggesting industries they believed suitable for apprenticeship. It is important to note that many respondents answered this question on industry expansion in terms of occupations (e.g., the concept is adaptable to most high skill occupations, or expansion should be limited to those industries which require substantial training).

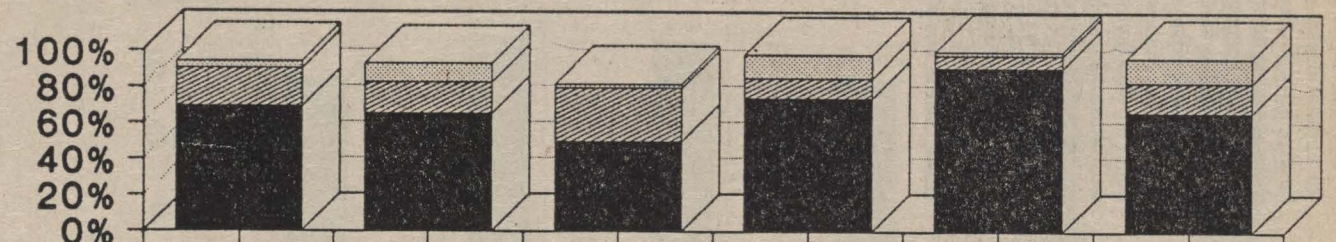
For others who favor limits, the limitations were more generally stated. In this category, a few believed that expansion should only be to industries willing to commit funds to the endeavor, and a few would expand to those Industries important to the nation's security or to its competitive position in the world economy. For many respondents, expansion was not specifically limited to particular industries, but was more generally tempered by labor market realities or experience with the existing apprenticeship system. For example, some respondents believed that any expansion should be designed to insure the participation of those members of the work force whose relative numbers will be expanding.

The "study" opinion sometimes reflected a hesitancy to embrace expansion wholesale because it might, for example, perpetuate exclusion of women. And sometimes this opinion indicated the belief that no expansion should be undertaken without a careful, structured analysis of areas appropriate for apprenticeship.

All of these opinions were supportive of a broadened apprenticeship concept, though with differing degrees of qualifiers. Figure 4 shows the difference in support for expansion across all respondent lines. However, the most important point about this chart is the strength of support from all groups, ranging from 82 percent to 100 percent.

BILLING CODE 4510-30-M

EXPANSION OF APPRENTICESHIP
FAVORABLE OPINIONS BY GROUP



	BUS	LAB	JATC	GOV	EDUC	PUB
TOTAL	94%	93%	82%	98%	100%	97%
STUDY	4%	10%	2%	13%	2%	13%
LIMIT	21%	17%	30%	11%	7%	17%
EXPAND	69%	66%	50%	74%	91%	67%

EXPAND LIMIT STUDY

FIGURE 4

BILLING CODE 4510-30-C

Only 6 percent of the opinions, shown in Figure 3, indicated that apprenticeship should not be broadened to all, or additional industries. This opinion was held more strongly by some respondent groups than others. None of the respondents in the Education Group was opposed to expansion, while 18 percent of the JATCs did not favor expansion. Some of those who were opposed to expansion were not attempting to address the issue of broadening apprenticeship to all industries, but were answering narrowly, for their particular industry. Others thought that no expansion should take place until improvements had been made to the existing system, such as standardizing the course work for apprentices or improving the record on participation of women.

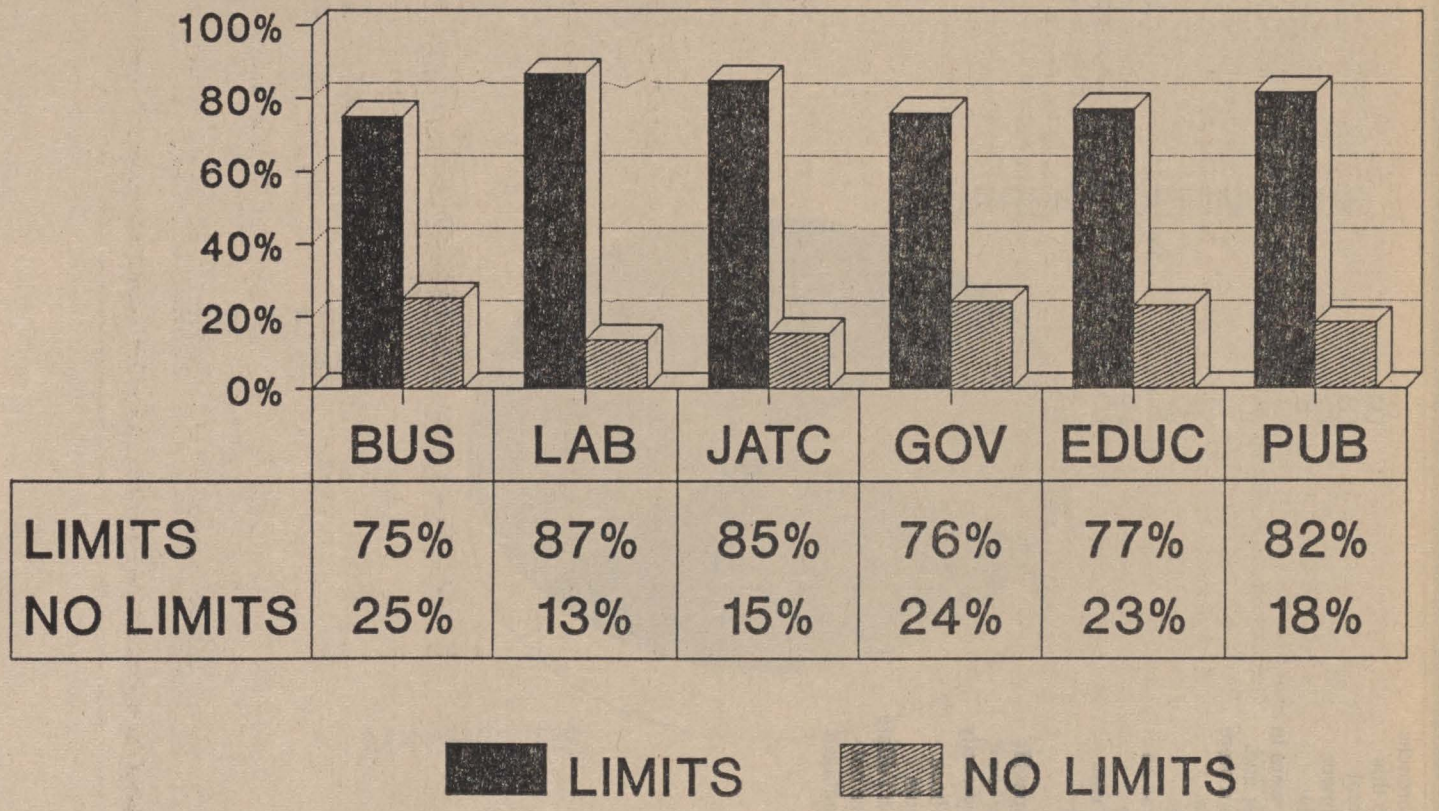
Issue #2: What should be the Limitations or Parameters, in Terms of Occupations, of An Expanded Apprenticeship Effort?

A large percentage of the respondents addressed this issue. Of the 310 total respondents, 200 (65 percent) expressed views as to whether there should be occupational limits and how these limits should be defined. In addition, a number of respondents expressed opinions and concerns relating to the quality of apprenticeship training and how it can be restructured.

Respondents, in general, believed that the apprenticeship concept should not be expanded to all occupations. Rather, there needs to be some definition or limit to those occupations to which the apprenticeship model is applied.

Figure 5 illustrates, by group, percentages of those responding to this question who favor limits compared with those who believe there should be no limits, in terms of occupations, for expansion of apprenticeship. A high percentage of all groups felt there should be limits to the occupations considered apprenticeable.

BILLING CODE 4510-30-M



	BUS	LAB	JATC	GOV	EDUC	PUB
LIMITS	75%	87%	85%	76%	77%	82%
NO LIMITS	25%	13%	15%	24%	23%	18%

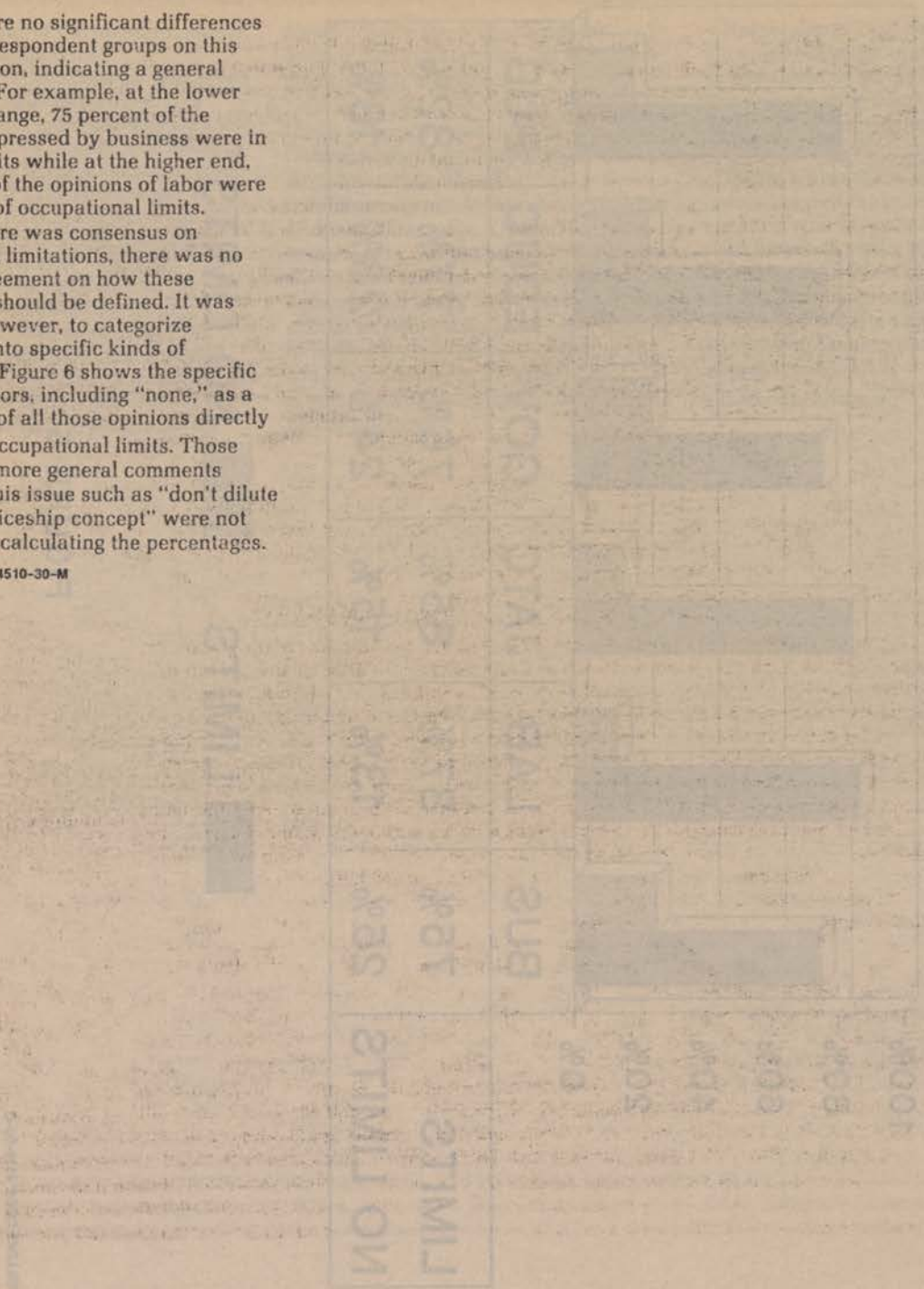
FIGURE 5

BILLING CODE 4510-30-C

There were no significant differences among the respondent groups on this basic question, indicating a general consensus. For example, at the lower end of the range, 75 percent of the opinions expressed by business were in favor of limits while at the higher end, 87 percent of the opinions of labor were supportive of occupational limits.

While there was consensus on establishing limitations, there was no general agreement on how these limitations should be defined. It was possible, however, to categorize responses into specific kinds of limitations. Figure 6 shows the specific limiting factors, including "none," as a percentage of all those opinions directly related to occupational limits. Those who made more general comments related to this issue such as "don't dilute the apprenticeship concept" were not included in calculating the percentages.

BILLING CODE 4510-30-M



OCCUPATIONAL EXPANSION
LIMITING FACTORS

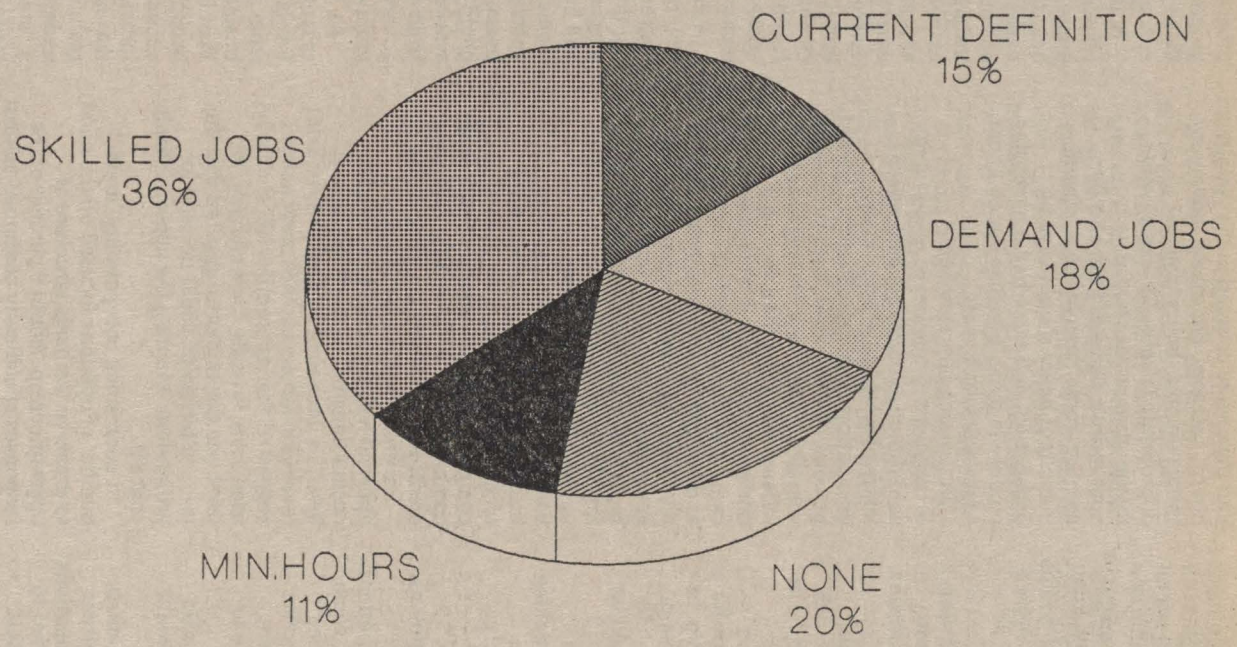


FIGURE 6

BILLING CODE 4510-30-C

As shown in Figure 6, the most common response, representing 36 percent of the opinions, was that expansion of the apprenticeship model should be targeted to skilled occupations. This response significantly outnumbered any other for the business, JATC, education and government groups and also was a frequent response given by labor and public interest group representatives.

After "skill" the next most frequent opinion was "none". This does not necessarily mean, however, that these respondents believed that apprenticeship is applicable to all occupations. More typically, opinions were expressed that there should be no rigid definition of apprenticeable occupation. Instead, the definition should be flexible enough to allow for a broad expansion of apprenticeship. In this connection, one respondent said that there should be no artificial time limits, but that a distinction should be made between the expansion occupations and existing, proven apprenticeship occupations. By making this distinction, the results of the expansion effort can be separately evaluated.

Another frequent response, representing 18 percent of the opinions, was to target expansion of apprenticeschip to demand occupations. In defining demand occupations, some respondents specifically mentioned emerging technical jobs in the service and health care industries. Others indicated it would be appropriate to identify critical skill shortage occupations. Others specifically said that industry, not government, should define demand occupations.

A smaller percentage of all opinions (15 percent) specified that the current definition of apprenticeable occupations was adequate and could be applied to any expanded apprenticeship effort. Criteria for apprenticeable occupations currently stipulate a minimum of 2000 hours of progressive on-the-job work experience with a recommended minimum of 144 hours of related technical training. While this opinion represented a small percentage of all opinions, it was the most frequent response given by individuals representing labor and JATC groups. Only a few individuals in the other groups specifically referred to the current definition.

Slightly more than 10 percent of the opinions recommended continuing using a minimum number of hours to determine apprenticeable occupations. It is quite likely that some of these respondents had in mind the current definition but did not specifically say so and thus, were counted in the "minimum hours" category. For others, however, using minimum hours was an appropriate criteria, but the existing minimum was not viewed as appropriate. Some did not specify a number, some thought the minimum number of hours should vary by occupation, and some had a particular number in mind, whether it was 1 year, 4,000 hours, or 4 years.

In defining apprenticeable occupations, a number of respondents said that instead of requiring specific hours of work experience in an occupation, that apprenticeship should be competency-based, with successful completion tied to achieving specified milestones rather than serving a miminum time period. This comment came most frequently from education and business representatives but was also made in several responses from government and public interest representatives. One respondent went further by saying that there should be uniform standards to measure competency in order to promote transferability of apprentinceship credentials. Another recommended a competency-based instruction program combined with a method for awarding credit for previously acquired skills.

Several other respondents said apprenticeship should be limited to occupations below the professional level, i.e. technical and subprofessional levels. However, another respondent suggested that apprenticeship should be used more broadly for managers. At least one respondent suggested that the term "internship" could be used for professions adopting the apprenticeship concept.

In addressing occupational limits, a number of opinions focused on the need to preserve the basic structure of apprenticeship. About 6 percent of the responses specifically cautioned against any dilution or watering-down of the apprenticeship concept. This comment was made by representatives from each of the interest groups. In this connection, a number of respondents expressed concern about maintaining the quality of current programs.

Although the words "quality" and "don't dilute" were frequently used, respondents had different ideas about quality and preserving the structure of apprenticeship. For some, quality was tied to minimum program standards while for others it is tied to the length of the programs. One responent who believed that quality is essential believed that no programs should be less than 2 years. Another respondent said that minimum standards are needed to prevent "watered-down" programs which were defined as programs of less than 2 years. Both of these respondents were from the education community.

In this connection, several respondents maintained that the apprenticeship model should be applied only to occupations requiring a broad base of skills and knowledge and encompassing multi-disciplinary training. On the other hand, several respondents indicated that apprenticeship should address the more narrow, specialized occupations that are emerging in the labor market. Typical opinions ranged from the need to train "complete journey persons" to the need for shorter apprenticeships to accommodate emerging new technological positions.

A compromise to the narrow vs. general apprenticeship issue was suggested by about 5 percent of the opinions. Those who held this opinion suggested that apprenticeship programs can be modified to include tiered or levels of training, and could allow for specialization as well as the broader-based training. Such an arrangement could also provide a career ladder for workers. This suggestion came mostly from representatives of business, government, education and the interest groups.

As an example of tiered training, one respondent suggested as many as 12 levels of apprenticeship training, ranging from pre-apprentice to international business/industry/labor generalist. Within these levels, a wide range of occupations and specialties could be accommodated. The notion was that an individual could stop at any level but that all levels would receive regular technological and skill development updating. Another respondent suggested a "step ladder" approach whereby a trade would identify the highest attainable skill level for an occupation and an individual could work towards that point.

Finally in addressing apprenticeable occupations, a number of respondents mentioned the need for continuing or upgrade training for journey level workers. Some thought that since nothing is static, all skills need to be refreshed over time. And for some, continued training was considered especially important because of the rapidly changing technology occurring in all industries. While this response was most frequently given by representatives from business, it was by no means isolated to business. Responses from all groups addressed the importance of continuing training.

Issue #3: What Should be the Delivery System for an Expanded Apprenticeship System?

Most respondents addressed this issue; however, there was little consensus among groups and some confusion over the meaning of a delivery system. When responding to this issue, many individuals addressed the role of government in administering apprenticeship rather than the role of those who can or should sponsor programs or deliver services. Thirty-seven percent of respondents did not address this issue.

The 195 respondents to this issue, representing 63 percent of the total, provided 261 specific suggestions on possible delivery systems for an expanded apprenticeship system. Even though there was a diversity of responses, it was possible to categorize most suggestions into six delivery possibilities—JATC, the existing system, flexible systems, partnerships, individual employers and associations.

It should be noted that there may be overlap among the areas because the term delivery system and who should participate in such a system may have had different meanings for different respondents. There was undoubtedly little agreement among all respondents on the meaning of the key words used in compiling the opinions.

Figure 7 shows the distribution of opinions among the six delivery system possibilities, for those who specifically commented on the delivery system. It also should be noted that some respondents had more than one suggestion and, accordingly, the number of opinions from which the percentages were calculated well exceeds the number of respondents.

BILLING CODE 4510-30-M

DELIVERY OF APPRENTICESHIP OPINIONS

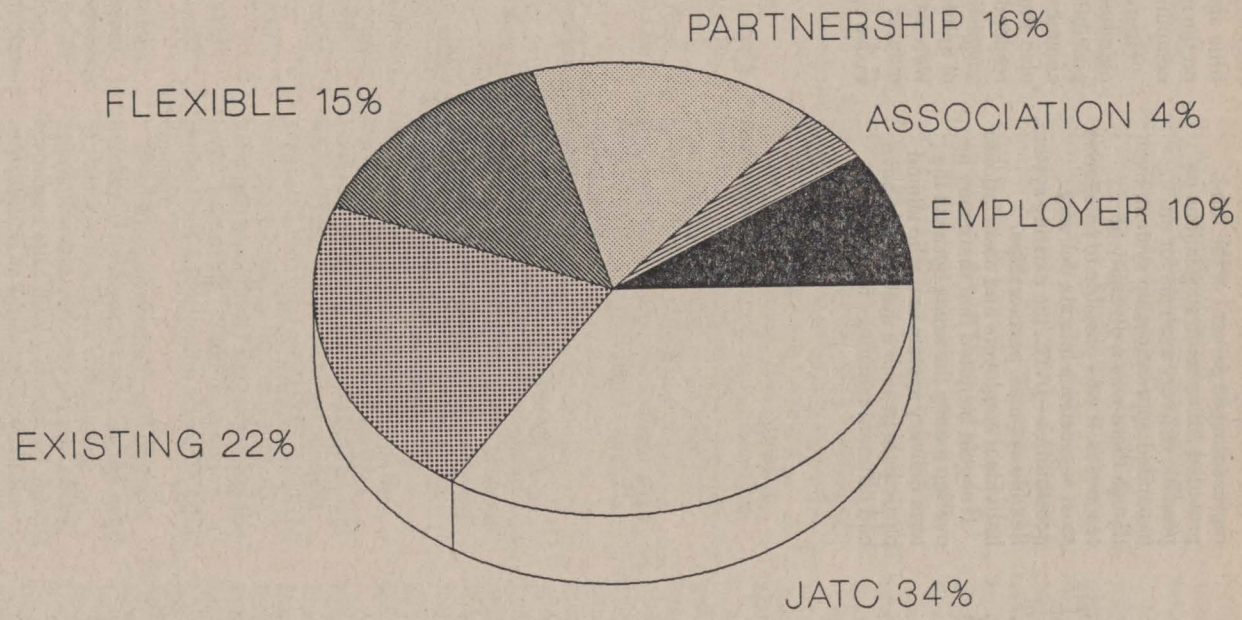


FIGURE 7

BILLING CODE 4510-30-C

The type of delivery system with the highest percentage of responses is the Joint Apprenticeship and Training Committee—JATC. This is the traditional delivery system for apprenticeship and is prevalent in the sectors of the building and construction trades industry represented by labor unions as well as in certain manufacturing industries. The percent of opinions suggesting the JATC as the delivery system in any expanded effort ranged, within respondent groups, from a low of 5 percent to a high of 29 percent. Not surprisingly, the highest percentage was from the JATC respondents.

A high percentage of opinions from labor recommended either the JATC or the existing system. The existing system was also recommended by a significant percentage of those representing JATCs. Because of the likely confusion of terminology mentioned above, many of those who specifically cited "existing system" as the appropriate delivery system may have meant the JATC, which is the prevalent "existing system" in the construction trades and manufacturing industries. However, for other respondents, the opinion "existing system" meant what the reviewers intended by the key word—the range of entities which currently sponsor apprenticeship programs, including JATCs, associations, individual employers, State and local government units and the military.

As indicated, a number of opinions from labor and the JATC groups gave the "existing system" suggestion, but this same recommendation was also made by at least several respondents from each of the other interest groups. It was the second most prevalent opinion, representing 22 percent of all suggestions. A typical comment made was that the current system works well and is a strong base for building an expanded apprenticeship effort.

Flexibility and partnership were the only other two areas to receive more than 10 percent of the opinions and partnership had somewhat different meanings for different respondents. Specifically, who should be included in the partnership differed among opinions. The typical response suggested a partnership of government, business, labor and education. However, there were variations on this basic recommendation. Within this framework, several individuals specifically said that there needs to be worker representation included in the delivery system regardless of whether there is a formal labor organizations.

For example, one respondent believed that apprentices should be included on the committee that administers the apprenticeship program. Another respondent said if there is no worker involvement, there will not be broad acceptance of the program. This same respondent made specific reference to the fast growing, nonunion service sector.

There was greater consistency among respondents who said that the delivery system needs to be flexible. About 15 percent of the opinions expressed were for a flexible system. This meant that no one system is applicable to all situations. Instead, the delivery system must be suited to particular circumstances, and most thought it should be determined locally. This comment was made by respondents from all interest groups, except the JATCs, but most frequently by representatives from government.

About 10 percent of the respondents recommended that individual employers sponsor apprenticeship programs. One respondent suggested that major corporations can take a leading role in sponsoring apprenticeship programs. However, this suggestion came mainly from individuals representing business and government. Few respondents outside these two interest groups made this recommendation. Finally, a small percentage of responses, mainly from business, recommended using associations as a delivery system for an expanded apprenticeship system.

In responding to issue 3, many respondents focused on the role of education. This is logical since education, particularly the community and technical colleges, are a primary source for providing the related instruction outside the work site. Many respondents felt that the role of education in apprenticeship needs to be strengthened. Opinions ranged from better coordination with education to making education a full participant in apprenticeship programs. The suggestion that education should be a full partner in delivery of apprenticeship programs came primarily from the education respondents, with almost 60 percent of the education respondents recommending specifically that education should be an equal partner in the delivery of apprenticeship programs. Typically, the education responses were directed at a greater role for the community colleges or for the vocational educational system in general.

Within business and government a relatively significant percentage of respondents recommended strengthening the role of education in any expanded apprenticeship effort. Thirty-five percent of business and 21 percent of government respondents made this recommendation. However, with the other groups, relatively few respondents addressed education as it relates to delivery systems for apprenticeship programs.

Issue #4: What Should Be the Role of Government in An Expanded Apprenticeship Program?

A total of 238 respondents addressed this issue, with 556 opinions on the role of government. Although some were commenting on what the role of government should be in the current system, many were addressing more directly the needs that they anticipated in an expanded program. An attempt was made in coding the responses to delineate the differences in roles that were suggested for State and Federal governments. Because a great number of respondents did not distinguish between the appropriate roles for the Federal government vs. State governments and, for those who did, the frequency of opinions related to each level of government was quite similar, opinions pertaining to State and Federal government roles were combined.

Furthermore, the issue was open-ended, and the list of conceivable opinions on government role was long. A great number of functions for government were suggested and many of these functions overlap, making generalizations difficult. Nevertheless, a number of observations are possible and useful.

Figure 8 depicts the total opinions from all who responded with view on the role of either the Federal government, State governments, both, or government in general.

BILLING CODE 4510-30-M

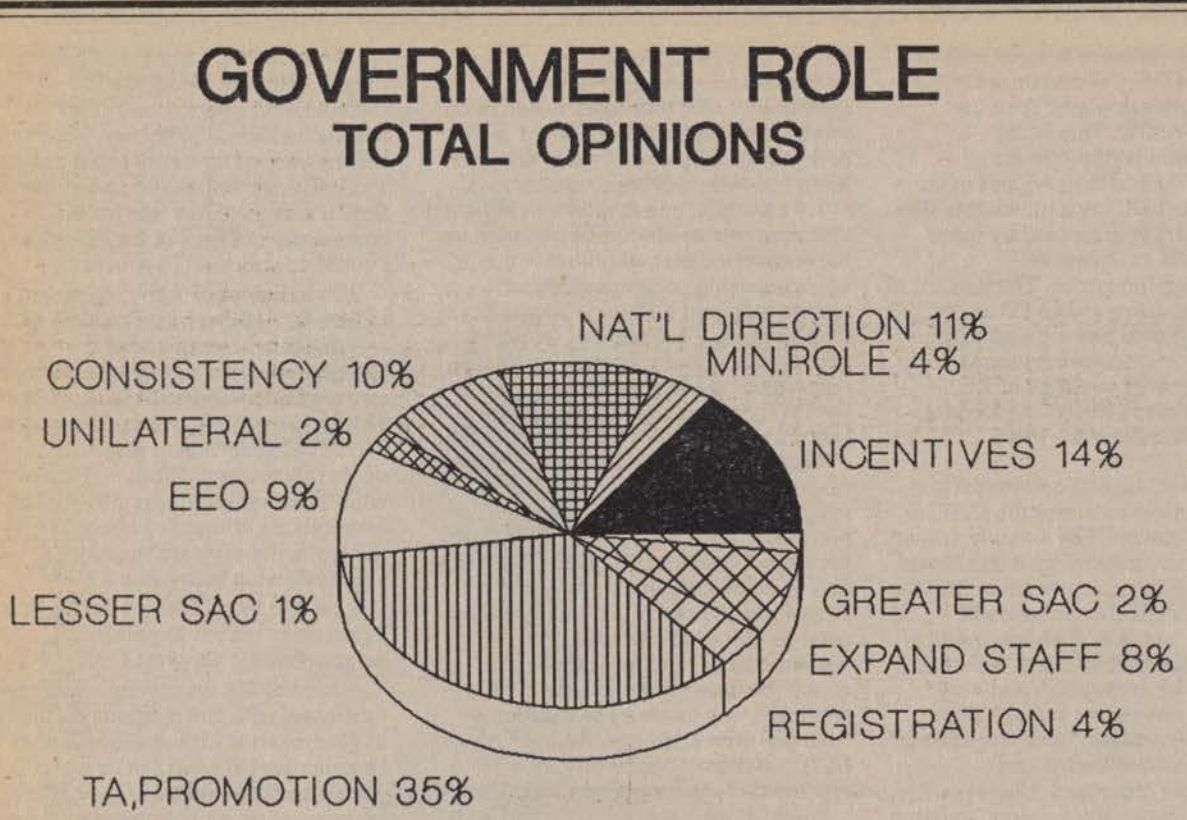


FIGURE 8

BILLING CODE 4510-30-C

Technical assistance and promotion were mentioned most frequently as a role for government in the apprenticeship program and this preference was common to all respondent groups. Together they accounted for 35 percent of the opinions. What type of assistance the government should provide and under what circumstances varied somewhat. For a few, the appropriate role for government was to provide assistance, but only when asked. For others, the provision of technical assistance was seen as an essential ingredient in an effective apprenticeship system, needed on many fronts—from technical assistance in encouraging development of national standards, to technical assistance in promoting equal employment opportunity, to assisting in establishing JATCs. For some technical assistance meant establishing apprenticeship information centers in all States, and others thought the focus should be on assistance in developing and updating curricula. In addition to traditional promotional activities, a few suggested that government should promote apprenticeship by providing a forum for linkages.

After technical assistance and promotion, the frequency of responses on any particular role for government falls off considerably. The next most frequently mentioned role for government was to provide incentives. Fourteen percent of the opinions involved some form of incentive or financial assistance.

The type of specific incentive envisioned ranged from tax incentives and seed money for employer-based training, to pilots and model programs for different industries, to funding apprenticeship information centers. Several respondents suggested reimbursing States with Federal funds—in a relationship similar to the Federal/State unemployment insurance arrangement—for supporting an apprenticeship agency. Some suggested that government resources should be used to improve the quality of training.

Of all opinions on this issue, 11 percent were related to providing national direction. For the most part, this opinion reflects a general belief that to expand apprenticeship significantly will require considerable national attention, support and leadership. For some, national direction meant an aggressive marketing campaign at the national level, and for others it meant assuring quality training sufficient to meet national needs for a strong economy and a strong defense. Several respondents believed that government should provide leadership by initiating apprenticeships for its employees.

Closely allied to the role of providing national direction was the role of assuring consistency and promoting uniformity, which accounted for 10 percent of the responses. This sometimes meant that government should establish national standards and use such standards to develop uniform training formats, and sometimes it reflected a concern with portability and the ability of apprentices and/or journeyworkers to transfer between companies or industries. Some thought that uniformity and portability could best be advanced through maintenance of a Federal data base, especially lists of jobs and certifications. For some, consistency meant equal access for parallel programs (apprenticeship programs, sponsored by open shops, in occupations for which there are existing registered programs sponsored by JATCs), and many who held this view thought consistency could not be assured with the existence of both Bureau of Apprenticeship and Training States and State Apprenticeship Council States.

Nine percent of the total opinions were related to the government's role in equal employment opportunity. Some believed the government must take a strong and active role in enforcing anti-discrimination regulations. And some expressed the view that the apprenticeship program needed to be strengthened for the Year 2000; and to accomplish this, the Bureau of Apprenticeship and Training needed to establish clear guidelines to help industries attract more women and minorities.

Although relatively few respondents delineated separate roles for the Federal and State governments, of those who specifically addressed State functions, 17 percent specifically supported an increased role for State Apprenticeship Councils and 12 percent thought their role should be decreased. About 9 percent of the opinions specifically addressing the Federal government role endorsed strengthening the role of the Bureau of Apprenticeship and Training.

Issue #5: How Can Apprenticeship Be More Effectively Linked to the Education System?

The 242 respondents to Issue 5 registered 335 opinions on whether and how apprenticeship could be linked with the education system, either through school-to-work activities or through coordination arrangements designed to accomplish other objectives.

Although the title of Issue 5 asked, in general, how apprenticeship could be linked more effectively to education, the discussion of this issue focused more specifically on the school-to-work transition. (Can apprenticeship be linked to education in ways that could reduce the unproductive time that youth spend finding their niche in the labor market and thereby help to alleviate labor shortage problems anticipated because of the declining youth labor pool?) Opinions varied, with somewhat less than half specifically related to the school-to-work issue.

Among those who specifically addressed the advisability of developing a school-to-work linkage, there was overwhelming support for the concept, with 92 percent responding favorably, as shown in Figure 9. Support for school-to-work was highest among the government and education representatives, none of whom specifically stated opposition. Business support was also high, with 98 percent of the business opinions favorable. The least support for a school-to-work arrangement was found in the JATC group, which was evenly split among those who supported and those who opposed school-to-work linkages.

BILLING CODE 4510-30-M

EDUCATION LINKAGES
SCHOOL TO WORK OPINIONS

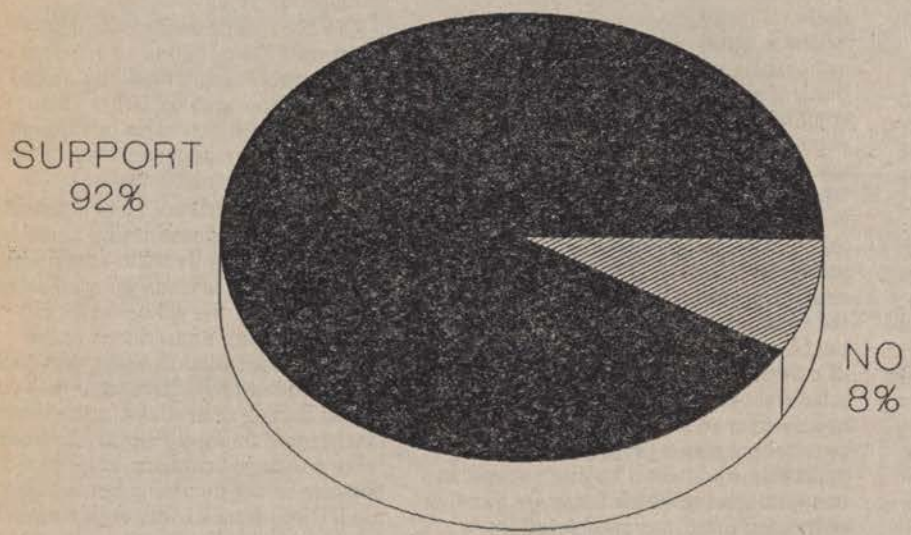


FIGURE 9

BILLING CODE 4510-30-C

There was a variety of opinions about how best to structure or design a school-to-work program. About a third thought that the secondary schools needed to initiate well-rounded career counseling programs, which could present apprenticeship as an attractive alternative to college. For this group, schools were too often rated on their ability to send students to college and educators were believed to see college as the only success. Some stated that counselors should have equal knowledge of the trades and the professions and that they needed to help remove the unfavorable image of the skilled trades apprenticeships that exists among some parts of both the education community and the broader population.

About 10 percent of the opinions were specifically related to the idea of receiving credit for academic and vocational skills acquired in secondary school and having it count towards apprenticeship requirements. Some suggested structured internships designed specifically to qualify students for apprenticeship upon graduation. And others specified the need for close employer involvement in any school-to-work programs to assure responsiveness to industry needs. Illustrative of this thinking was the recommendation to integrate vocational education with employer-specified standards and grant credit to students for achieving certain competencies.

More than half the opinions on school-to-work were more general in nature, primarily showing unspecified support for the concept. Several believed that occupational education should begin long before career decisions are likely to be made, and suggested some career programs from grades Kindergarten through 12. More than one respondent remarked that school-to-work programs are designed to work for youth, but the Workforce 2000 projections will require that we utilize all current workers and potential workers. Consequently, attention must be given to building links with the education system that can attract women, minorities, and workers changing careers in mid-life.

Eight percent of those who voiced opinions on the school-to-work concept were opposed to it. Some of these questioned the basic premise that we need to reduce the unproductive time of young people after they leave high school. Instead, some of these respondents thought that high school students were not mature enough to decide on a career and/or needed time to explore career possibilities. At least one respondent answered from the perspective of a particular industry, and did not encourage student involvement because of the pessimistic job growth prospects in that industry. A few did not want the apprenticeship system tied to the vocational education system.

The "other" responses were not separately categorized, but a sampling of the comments in this group illustrates the rich variety of opinion on this subject. Some responses were related to the role of the education community in providing related instruction to apprentices. Improvements to this process were suggested, such as arranging for apprentices to attend classes during normal working hours. Several respondents looked to a relationship with education as a link with resources, with some favoring full appropriation of Carl D. Perkins Vocational Education Act resources. One recommended redirecting Perkins Act, Job Training Partnership Act and Federal Unemployment Tax Act resources for preapprenticeship programs and for programs of continuing education.

For many, the question of links was primarily one for industry and education to address together, with many holding the opinion that industry needed to better communicate its concerns and needs to those in the education community. There was the suggestion that the use of vouchers by employers should be explored as a way to make the education system responsive to industry needs.

Many in the "other" category lamented the attention paid to college-bound youth, at the expense of those who wanted or needed to begin their careers following high school. Among the most ambitious recommendations was the creation of a National Center for Applied Technology and Skills which would, among other things, train faculty for the nation's vocational schools, design curricula, and develop a certification system for teachers.

In general, those who had comments in the "other" category believed that education was a natural ally of training, particularly of apprenticeship which, by its nature, recognizes the interdependence of hands-on experience and theoretical knowledge. Coordination between education and apprenticeship was very much on people's minds, with several suggesting that the scrutiny now being placed on the education system represented an opportunity for building better linkages.

A substantial percentage of respondents to Issue 5 commented on the need to improve the basic education of students coming out of the public secondary schools. The data, shown in Figure 10, are especially significant because the issue of basic education was not specifically raised in the issue discussion. JATCs, the respondent group which can be expected to have the most direct contact with apprentice applicants, mentioned the need to improve basic education with significantly more frequency than any other group.

BILLING CODE 4510-30-M

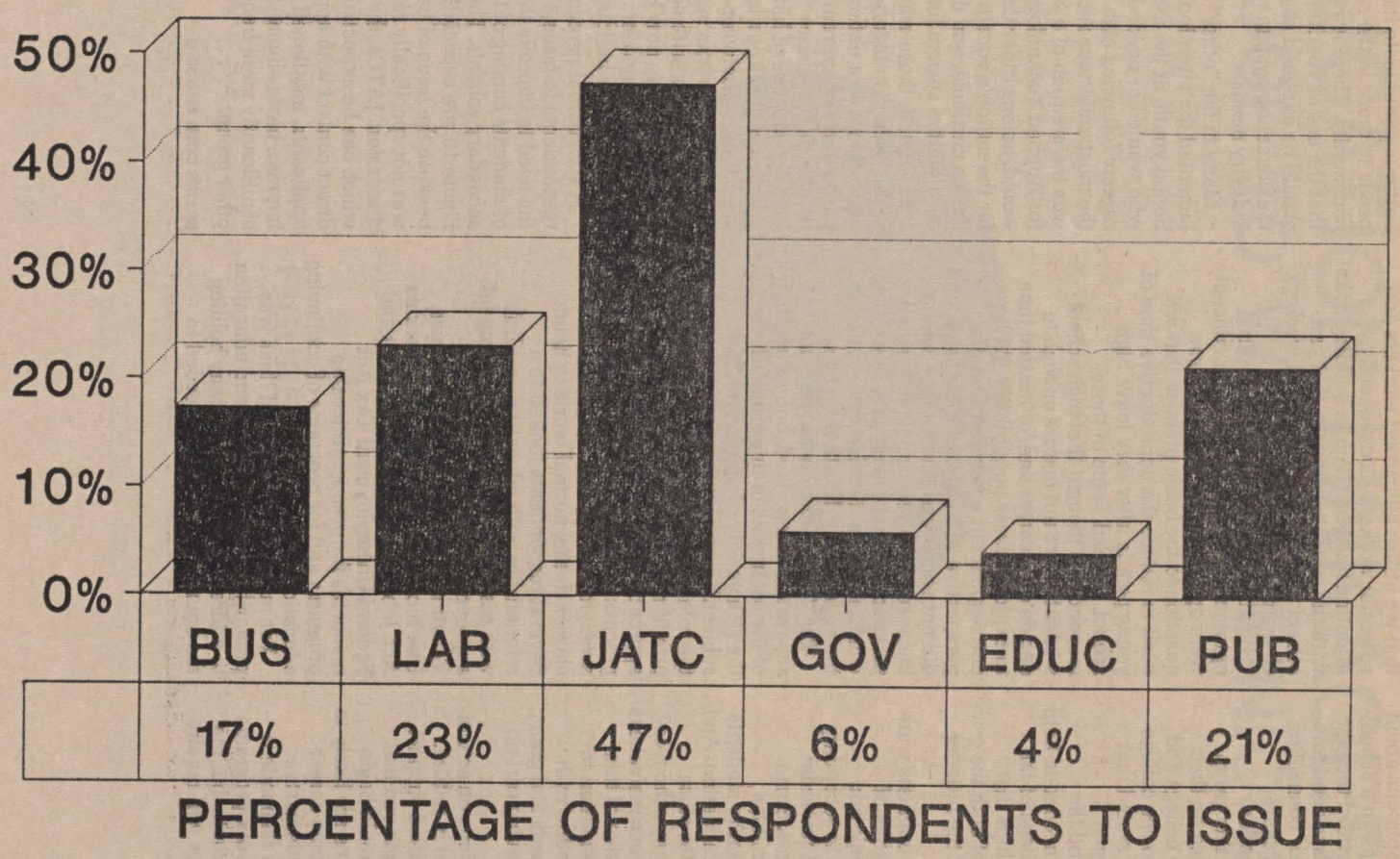


FIGURE 10

BILLING CODE 4510-30-C

The range of opinion on the need to improve basic education is from 47 percent for the JATCs to 6 percent and 4 percent for government and education, respectively. A few of the respondents, across all groups, were simply underlining the importance of basic education to any training effort.

But many more were explicitly critical of the education system for the alarming number of graduates who lack basic competencies in the "3Rs." These respondents often said that the job of the schools is to lay the foundation for developing skills, while the job of apprenticeship programs is to teach skills. And some expressed it as not getting their money's worth for their tax dollars.

Next Steps

These responses and other available information have been analyzed in order to provide focus and direction for the next stages of the apprenticeship review. From this analysis, it was possible to identify areas of general consensus and other areas of broad interest and concern. As a result, three policy objectives have been formulated. These policy objectives will form the underpinnings for the next stage of the apprenticeship initiative—development of short-term research issue papers and continued public outreach and dialogue. These policy objectives are:

- To expand the apprenticeship model to new occupations and industries.
- To build an apprenticeship system which encourages consistent standards, high quality, flexible, portable, competency-based, and variable length apprenticeship programs.
- To ensure that there is an effective delivery system to administer new approaches to apprenticeship training and that apprenticeship programs are coordinated with related education and training systems.

The research program was announced as a notice in the June 3, 1988, **Federal Register**, 53 FR 20386. This program includes both short and longer term research. Thirteen specific topics for the shorter term research were identified and announced. These topics support the basic policy objectives for the apprenticeship review. In addition to the specific topics, the Department will undertake a review of the basic authority for the national apprenticeship system—the legislation and regulations.

A series of contracts were awarded to develop a number of the short-term papers. Other issue papers will be completed utilizing Bureau of Apprenticeship and Training staff. The short term research will be completed in the early fall of 1988. Longer-term research and demonstration projects are planned to begin in early 1989.

The Department also plans additional public input. Bureau of Apprenticeship and Training officials have been meeting with key business and labor representatives to discuss the apprenticeship review. In the late summer and early fall a series of focus papers will be published for public comment in the **Federal Register**. These papers will present a wide range of options for expansion and change of the apprenticeship system.

The research and the public dialogue will culminate in a comprehensive report of findings and recommendations to be titled *Apprenticeship: A Blueprint for the Future*. This report is scheduled to be completed in December of 1988. It will include a series of specific recommendations and a possible timetable for implementing them.

Appendix A—Key Words

ISSUE #1—EXPANSION OF APPRENTICESHIP

- Expand.
- Study.
- Limited Expansion.
- Do not Expand.
- No Response.

ISSUE #2—DEFINING APPRENTICESHIP OCCUPATIONS

- No Limits.
- Current Definition.
- Skilled Occupations.
- Minimum Hours.
- Demand/Industry Recognition.
- Tiered Programs.
- Don't Dilute.
- No Response.

ISSUE #3—DELIVERY SYSTEM

- Existing System.
- JATC.
- Employer.
- Association.
- Partnership.
- Flexibility.
- Worker Involvement.
- Include Education.
- No Response.

ISSUE #4—GOVERNMENT ROLE

- General Government.
- Quasi-government.
- National Direction.
- Minimum Role.
- Incentives.
- Uniformity/consistency.
- Facilitate unilateral programs.
- EEO compliance.
- TA/coordination.
- Promotion.
- Expand staff/status.
- Registration.
- State—TA.
- State—Promotion.
- State—Incentives.
- State—EEO.
- State—Registration.
- Greater SAC Role.
- Lesser SAC Role.
- No Response.

ISSUE #5—LINKS TO EDUCATION

- School-to-Work.
- School-to-Work/Options.
- School-to-Work/Academic Credit.
- No School-to-Work.
- Better Basic Education.
- Academic Credit.
- Other.
- No Response.

[FR Doc. 88-20073 Filed 9-1-88; 8:45 am]

BILLING CODE 4510-30-M

Reader Aids

Federal Register

Vol. 53, No. 171

Friday, September 2, 1988

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

33801-34012.....1
34013-34272.....2

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Order:

Presidential Determinations:

No. 88-20 of July 26, 1988.....33801

7 CFR

252.....34013
301.....34014
354.....34021
401.....34022
907.....34022, 34026
908.....34022, 34026
920.....33801, 34033
981.....34035
1421.....33803
1951.....338904

Proposed Rules:

910.....34107
987.....34108
1124.....33823

9 CFR

78.....34035
92.....34037

12 CFR

Proposed Rules:

615.....34109

14 CFR

1.....34198
23.....34194
27.....34198
29.....34198
33.....34198
39.....34038, 34040
71.....34041, 34042
97.....34039
99.....34043

Proposed Rules:

39.....34116, 34117

18 CFR

Proposed Rules:

4.....34119
16.....34119

20 CFR

Proposed Rules:

603.....34120

21 CFR

176.....34043

22 CFR

204.....33805

26 CFR

1.....34045, 34194
602.....34045, 34194

Proposed Rules:

1.....34120, 34194
154.....34194
602.....34120

29 CFR

1910.....33807

Proposed Rules:

103.....33934
1910.....33823
1915.....33823
1918.....33823
1952.....34121

30 CFR

925.....34128

32 CFR

199.....33808

33 CFR

117.....34076

Proposed Rules:

117.....34129, 34130

36 CFR

Proposed Rules:

1228.....34131

40 CFR

52.....33808, 34077
180.....33897
260.....34077
264.....33938, 34077
265.....33938, 34077
270.....34077
300.....33811
761.....33897

Proposed Rules:

52.....33824, 333826, 34132

44 CFR

64.....34087
67.....34089

47 CFR

Proposed Rules:

69.....33826

48 CFR

Ch. 63.....34104
1.....34224
3.....34224
7.....34224
9.....34224
10.....34224
19.....34224
29.....34224
31.....34224
36.....34224
47.....34224

52.....34224
204.....34090
252.....34090
519.....33812
542.....34089

49 CFR

571.....33898
1342.....33813

50 CFR

17.....33990
23.....33815
227.....33820

Proposed Rules:

672.....33897

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 30, 1988

Public Laws

are now available for the 100th Congress, 2nd Session, 1988

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 100th Congress, 2nd Session, 1988.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices).

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
*** 6216**

Charge your order. It's easy!

☐ **YES,** please send me _____ subscriptions to **PUBLIC LAWS** for the 100th Congress, 2nd Session, 1988 for $104 per subscription.

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA, CHOICE or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) 1/88

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371