1-9-89
Vol. 54 No. 5
Pages 595-786

federal register

Monday
January 9, 1989

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 six 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.

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.

Contents

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

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.

3 CFR

Proclamations:
5928 777

Executive Orders:
12661 779
12662 785

10 CFR
1018 772

14 CFR
39 (4 documents) 595-598
1264 599

Proposed Rules:
39 (2 documents) 622, 623
71 626

15 CFR
Ch. III 601
Ch. VII 601

16 CFR
Ch. II 601

18 CFR
154 602
157 602
260 602
284 602
385 602
388 602

24 CFR
840 736
841 736

Proposed Rules:
576 756
840 747
841 747
891 769

26 CFR

Proposed Rules:
1 627

29 CFR
1625 604

30 CFR

Proposed Rules:
926 632
936 633

33 CFR
110 604
117 611
162 604
165 (2 documents) 604, 611

38 CFR
36 612

Proposed Rules:
3 733

40 CFR
52 612
270 615
716 617
799 618

Proposed Rules:
52 634
435 634

Rules and Regulations

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-CE-31-AD; Amdt. 39-6104]

Airworthiness Directives; Beech Model 200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Beech Model 200 airplanes, which requires reduction of the structural safe life of the outer wing panels from 20,000 hours time-in-service (TIS) to 10,000 hours TIS until modified with an improved spar assembly. The original spars in these airplanes have a sharp radius at the lower barrel nut hole which is a potential fatigue origination point. Replacing the original spars with the improved spars will permit safe operation up to 20,000 hours TIS.

DATES: *Effective Date:* February 8, 1989.

Compliance: Required prior to the accumulation of 10,000 hours TIS.

ADDRESSES: Beech Service Bulletin No. 2240, dated February 1988; Beech Letter No. 52-83-0030, dated January 20, 1983; and Beech Letter No. 52-85-0049, dated April 17, 1985, applicable to this AD may be obtained from Beech Aircraft Corporation, Commercial Services, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the Rules Docket, FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the outer wing main spars on certain Beech Model 200 airplanes was published in the Federal Register on October 13, 1988 (53 FR 40071). The proposal resulted from the discovery of a manufacturing defect, which, if uncorrected, limits the wing outer panel safe life. The Beech Model 200 wing cyclic test was completed in February 1976, after accomplishing the required four lifetimes of testing. Subsequently, during residual strength testing of the same test article to loads exceeding limit loads, a fatigue crack was found in the lower main spar attachment counterbore. Later tests showed that the crack was caused by an inadequate corner radius in the bottom of the counterbore. The boring tool was modified to make a more liberal edge radius at the bottom of the counterbore which solved the problem. This improvement became effective with Model 200 serial number BB-149 for the right wing, and with serial number BB-162 for the left wing. The original wing structural safe life for airplanes with serial numbers below BB-162 must be reduced from what was published at the time of certification. An average reduced safe life of 10,000 hours TIS has been calculated due to the above defect.

It was originally decided to replace the discrepant spars under warranty. Later, the FAA determined that mandatory action was needed to assure that none of the affected airplanes exceed their reduced safe life before spar replacement was accomplished. Therefore an AD was proposed to mandate this spar replacement.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 50 airplanes with an approximate one time cost of $20,000 for each airplane. Until February 1990, this cost will be borne by the manufacturer, not to include removal and reinstallation of any non-Beech appliances or modifications which may prevent access to the main spar. These incidental costs are not considered to be significant. The total cost, if not accomplished by February 1990, is estimated to be $1,000,000 to the private sector.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Model 200 (Serial Numbers BB-2 through BB-161) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished per Beech Service Bulletin No. 2240, dated February 1988, or Beech Letter No. 52-83-0030, dated January 20, 1983, or

Beech Letter No. 52–85–0049, dated April 17, 1985.

To prevent possible failure of the wing main outboard spar, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, or upon accumulating 10,000 hours TIS, whichever occurs later, replace both wing main outboard spars in accordance with Beech Service Bulletin No. 2240, dated February 1988. Only the left wing main spar need be replaced for Serial Nos. BB–149 through BB–161.

(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 67209; telephone (316) 946–4400.

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

This amendment becomes effective on February 8, 1989.

Issued in Kansas City, Missouri, on December 23, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–320 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 88–NM–93–AD; Amdt. 39–6101]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires replacement of aluminum nose landing gear actuator support fittings. This amendment is prompted by numerous reports of nose landing gear support fitting failures and one recent incident of nose gear collapse on landing. This condition, if not corrected, could lead to failure of the nose landing gear due to inability to achieve a down and locked position.

EFFECTIVE DATE: February 8, 1989.

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

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Mudrovich, Airframe Branch, ANM–120S; telephone (206) 431–1927. 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 to include an airworthiness directive which requires replacement of aluminum nose landing gear actuator support fittings, was published in the **Federal Register** on August 8, 1988 (53 FR 29692). The comment period closed on September 28, 1988.

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

The Air Transport Association (ATA) of America commented on behalf of two of its members. One member airline commented that the Boeing kit number specified in paragraph A of the Notice should be changed to add the dash number. The FAA does not concur and has determined that the kit number reflected in the proposed rule is correct.

Another member airline suggested that the part number for a certain steel fitting, identified in the manufacturer's illustrated parts catalog, be specified in the final rule as interchangeable with the part number called out in paragraph A of the Notice. The FAA concurs in part with this comment. Since issuance of the Notice, the manufacturer has issued, and the FAA has reviewed and approved, Boeing Service Bulletin 737–53–1119, dated September 22, 1988, which provides instructions for replacement of the nose landing gear retract actuator support fitting. Additionally, this service bulletin identifies the replacement kit numbers and alternate part numbers. Therefore, the final rule has been revised to eliminate the reference to use of a specific part number, and to require replacement of the nose landing gear actuator support fitting in accordance with the new Boeing service bulletin. The FAA has determined that this change does not increase the scope of the rule, nor does it increase the economic burden on any operator.

The manufacturer suggested that the final rule be revised to require repetitive inspections for cracks, prior to replacement of the nose landing gear actuator support fitting. The FAA does not concur. In developing this rulemaking action, the FAA did consider including repetitive inspections, but determined that, in light of the fatigue crack growth rate of the aluminum nose landing gear actuator support fittings and service history of the fittings, such inspections are unnecessary. Further, to add such inspections to the final rule would be beyond the scope of this rulemaking action.

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

There are approximately 440 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Parts are estimated to be $3,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $664,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 9 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 Model 737 series airplanes, line numbers 1 through 446, certificated in any category. Compliance required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Replace the aluminum nose landing gear actuator support fitting with a steel fitting, in accordance with Boeing Service Bulletin 737–53–1119, dated September 22, 1988.

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

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

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

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

This amendment becomes effective February 8, 1989.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Office.

[FR Doc. 89–319 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 88–NM–108–AD; Amdt. 39–6100]

Airworthiness Directives: Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires a one-time inspection and correction, if necessary, of the brake alternate antiskid valve modules for correct check valve installation, and installation of additional check valves at the alternate brake metering valves. This amendment is prompted by reports of reducer unions installed in place of the required check valves in the alternate antiskid valve modules. Furthermore, an additional problem was identified in that the check valve installed at the alternate metering valves was not located so it could perform its function. These conditions, if not corrected, could result in the loss of fluid from the left hydraulic system after a failure causing loss of fluid in the right hydraulic system.

EFFECTIVE DATE: February 8, 1989.

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

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Systems and Equipment Branch, ANM–130S; telephone (206) 431–1949. 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 to include an airworthiness directive, applicable to Boeing Model 757 series airplanes, which requires a one-time inspection of the brake alternate antiskid valve modules to determine the correct check valve installation, and installation of additional check valves at the alternate brake metering valves, was published in the **Federal Register** on September 13, 1988 (53 FR 35319).

Interested persons 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 expressed no objection to the proposal.

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

There are approximately 186 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 102 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,320.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes, Group 1 and Group 2, as listed in Boeing Alert Service Bulletin 757–2A0081, dated June 24, 1988, certificated in any category. Compliance required within the next 120 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of airplane braking due to a single hydraulic failure, accomplish the following:

A. Inspect Groups 1 and 2 airplanes left and right alternate antiskid valve module return ports for proper check valve configuration, and correct, if necessary, in accordance with Boeing Alert Service Bulletin 757–32A0081, dated June 24, 1988.

B. On Group 1 airplanes, remove the reducer unions installed in the left and right alternate brake metering valve module return ports and install check valves, in accordance with Boeing Alert Service Bulletin 757–32A0081, dated June 24, 1988.

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 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 the accomplishment of the inspections and/or 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 8, 1989.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–318 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 85–ASW–17; Amdt. 39–6098]

Airworthiness Directives; Sikorsky Aircraft Model S–61L, S–61N, S–61NM, S–61R, S–61A, and S–61V Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires frequent inspections of certain Sikorsky Model S–61 series main rotor blades. The amendment increases the main rotor (MR) blade eligibility for S–61 helicopter operators who are involved with external load operations. The amendment is needed to provide relief for operators who may have MR blades or spares that are presently ineligible.

DATES: *Effective Date:* February 8, 1989.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, Division of United Technologies Corporation, Commercial Customer Service Department, 6800 Main Street, Stratford, CT 06601–1381. A copy of the service bulletin is contained in the Rules Docket, Office of the Assistant Chief Counsel, FAA, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7113.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by amending Amendment 39–5129 (50 FR 38506; September 23, 1985), AD 85–18–05, as amended by Amendment 39–5525 (52 FR 8582; March 19, 1987), AD 85–18–05R1, by revising the MR blade eligibility list to include previously ineligible MR blade part and dash numbers for use on certain Sikorsky Model S–61 series helicopters was published in the Federal Register on August 29, 1988 (53 FR 32921). Amendment 39–5129, as amended by Amendment 39–5525, currently requires frequent inspections on certain Sikorsky Model S–61 series main rotor blades. The proposal was prompted by additional information from the manufacturer and FAA data files that shows additional MR blades are also eligible for use on Sikorsky Model S–61 series helicopters involved in frequent, heavy-lift operations under Part 133 external load operations. This amendment is relieving in nature and imposes no additional burden.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation only involves about 12 helicopters engaged in Part 133 external cargo operations and the approximate cost would be reduced by $250,000 for each helicopter by allowing use of existing main rotor blades. Therefore, I certify that this action (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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. By further amending Amendment 39–5129 (50 FR 38506; September 23, 1985), AD 85–18–05, as amended by Amendment 39–5525 (52 FR 8582; March 19, 1987), AD 85–18–05R1, by revising

paragraphs (a)(1)(iii), (a)(2)(ii), (a)(2)(iii), (a)(2)(iv), and (a)(6); and by adding new paragraphs (a)(1)(iv) and (a)(2)(v) to read as follows:

* * * * *

(a) * * *

(1) * * *

(iii) P/N's 61170-20201-055, -056, -058, -059, -060, -061, -062, -065, and -067.

(iv) P/N's S6117-20101-041, -046, -050, -051, -054, -055, -056, -057, and -058.

(2) * * *

(ii) P/N's S6115-20601-041, -042, -045, -046, -047, and -048.

(iii) P/N's S6188-15001-041 and -045.

(iv) P/N's 61170-20201-054, -055, -056, -058, -059, -060, -061, -062, -065, and-067.

(v) P/N's S6117-20101-041, -046, -050, -051, -054, -055, -056, -057, and -058.

* * * * *

(6) The following blades are approved for Model S-61R transport category helicopters operating up to a combined aircraft and cargo gross weight of 19,500 pounds:

(i) P/N's S6115-20501-041 and -042.

(ii) P/N's S6115-20601-042, and -045 through -048.

(iii) P/N's S6117-20101-041, -050, -051,-054, -056, -057, and -58.

(iv) P/N's 61170-20201-055, -056, -058 through -062, -064, -065, and -067.

* * * * *

This amendment becomes effective February 8, 1989.

This amendment amends Amendment 39-5129 (50 FR 38506; September 23, 1985), AD 85-18-05, as amended by Amendment 39-5525 (52 FR 8582; March 19, 1987), AD 85-18-05R1.

Issued in Forth Worth, Texas, on December 19, 1988.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-317 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1264

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1264 by making editorial and word changes, and by adding clarifying language consistent with suggestions by the President's Council on Integrity and Efficiency, in compliance with the Model Regulation. This regulation establishes NASA's practices and procedures in compliance with the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*

EFFECTIVE DATE: January 9, 1989.

ADDRESS: Office of the General Counsel, Code GG, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Sara Najjar, 202/453-2465.

SUPPLEMENTARY INFORMATION: NASA published its final rule in the **Federal Register** on October 22, 1987 (52 FR 39498). This amendment corrects misspelled words, makes some word changes for clarity, and adds language conforming to the suggestions of the President's Council on Integrity and Efficiency in response to the American Bar Association (ABA).

Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined that:

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

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

List of Subjects in 14 CFR Part 1264

Administrative practice and procedure, Civil penalties and assessments, False claims or statements, Fraud, Remedies.

For reasons set out in the Preamble, 14 CFR Part 1264 is amended as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

1. The authority citation for 14 CFR Part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 42 U.S.C. 2473(c)(1).

2. Section 1264.101 is amended by revising paragraphs (d), (m)(3), (o), and (q) to read as follows:

§ 1264.101 Definitions.

* * * * *

(d) Benefit means, in the context of "statement," anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

* * * * *

(m) * * *

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

* * * * *

(o) Person means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

* * * * *

(q) Representative means an attorney who is in good standing of the bar of any State, Territory, or possession of the United States, or of the District of Columbia, or of the Commonwealth of Puerto Rico.

3. Section 1264.102 is amended by revising paragraphs (a)(3) and (b)(3) to read as follows:

§ 1264.102 Basis for civil penalties and assessments.

(a) * * *

(3) A claim shall be considered made to the authority, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority, recipient or party.

* * * * *

(b) * * *

(3) A statement shall be considered made to the authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the authority.

* * * * *

4. Section 1264.103 is amended by revising paragraph (c) to read as follows:

§ 1264.103 Investigation.

* * * * *

(c) Nothing in this section shall preclude or limit the investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to defer or postpone a report of referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

* * * * *

5. Section 1264.106 is amended by revising paragraph (b)(4) to read as follows:

§ 1264.106 Complaint.

* * * * *

(b) * * *

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 1264.109.

* * * * *

6. Section 1264.107 is amended by revising paragraphs (b) (1), (2) and (3) to read as follows:

§1264.107 Service of complaint.

* * * * *

(b) * * *

(1) Affidavit of the individual servicing the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his/her representative.

7. Section 1264.108 is amended by the addition of paragraph (c) to read as follows:

§ 1264.108 Answer.

* * * * *

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting the requirements of paragraph (b) of this section. The reviewing official, as provided in § 1264.110, shall file promptly with the presiding officer the complaint, the general answer denying liability, and the request for an extension of time. For good cause shown, the presiding officer may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

8. A typo is corrected in § 1264.114 and the section is revised to read as follows:

§ 1264.114 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

9. A typo is corrected in the section heading of § 1264.115. The section heading is revised to read as follows:

§ 1264.115 Disqualification of reviewing official or presiding officer.

10. Section 1264.117 is amended by revising paragraph (c) to read as follows:

§ 1264.117 Authority of the presiding officer.

* * * * *

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

11. Section 1264.118 is amended by revising paragraphs (c)(3) and (c)(5) to read as follows:

§ 1264.118 Prehearing conferences.

* * * * *

(c) * * *

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

* * * * *

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objections of other parties) and written arguments;

* * * * *

§ 1264.125 [Amended]

12. Section 1264.125 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) *Service.* A party filing a document with the presiding officer shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 1264.107 shall be made by delivering a copy or by placing a copy of the document in the U.S. mail, postage prepaid, and addressed to the party's last known address. When a party is represented by a representative, service shall be made upon such representative.

13. Section 1264.126 is revising paragraph (c) to read as follows:

§ 1264.126 Computation of time.

* * * * *

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response.

14. Section 1264.132 is amended by revising paragraph (f)(2) to read as follows:

§ 1264.132 Witnesses.

* * * * *

(f) * * *

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity pro se or designated by the party's representative; or

* * * * *

15. Section 1264.136 is amended by revising paragraph (c) to read as follows:

§ 1264.136 Initial decision.

* * * * *

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired or upon notification that the record is now closed. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the presiding officer or a notice of appeal with the authority head. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

16. Section 1264.137 is revising paragraph (f) and adding paragraph (g) to read as follows:

§ 1264.137 Reconsideration of initial decision.

* * * * *

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the authority head in accordance with § 1264.138.

(g) If the presiding officer issues a revised initial decision, the revised decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the authority head in accordance with § 1264.138.

17. Section 1264.138 is amended by revising paragraphs (b)(1) (c), and (l), to read as follows:

§ 1264.138 Appeal to authority head.

* * * * *

(b) * * *

(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if any other party files a motion for a reconsideration under § 1264.137, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

* * * * *

(c) If the defendant files a timely notice of appeal with the authority head and the time for filing motions for reconsideration under § 1264.137 has expired, the presiding officer shall forward the record of the proceeding to the authority head.

* * * * *

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805, after a defendant has exhausted all

administrative remedies under this part and within 60 days after the date on which the authority head serves the defendant with a copy of the authority head's decision, a determination that a defendant is liable under § 1264.102 is final and is not subject to judicial review.

James C. Fletcher,

Administrator.

December 27, 1988.

[FR Doc. 89-333 Filed 1-6-89; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

International Trade Administration

15 CFR Chs. III and VII

[Docket No. 81263-8263]

Transfer and Redesignation of Industrial Mobilization Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On October 23, 1988, the industrial mobilization functions under the Defense Production Act of 1950, as amended, and the national security investigation functions under section 232 of the Trade Expansion Act of 1962, as amended, were transferred from the International Trade Administration to the Bureau of Export Administration, within the U.S. Department of Commerce.

This rule transfers the Defense Priorities and Allocations Regulations and regulations governing national security investigations performed under section 232 of the Trade Expansion Act of 1962, as amended, from Chapter III where the regulations of the International Trade Administration are published to Chapter VII under Title 15 of the Code of Federal Regulations. Formerly codified as 15 CFR Parts 350 and 359 respectively, the regulations are redesignated as 15 CFR Parts 700 and 705.

EFFECTIVE DATE: January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Edward L. Levy, Section 232, Program Manager, Office of Industrial Resource Administration, Bureau of Export Administration, Telephone: 202/377-3795.

Accordingly, Title 15 of the Code of Federal Regulations is amended as follows:

CHAPTER III—[SUBCHAPTER B REDESIGNATED AS CHAPTER VII]

CHAPTER VII—[REDESIGNATED FROM CHAPTER III, SUBCHAPTER B]

1. In Chapter III, Subchapter B, is vacated and its contents are transferred to Chapter VII to be redesignated as shown in the table set forth below, and all internal cross references in 15 CFR Parts 350 and 359 are revised to reflect the newly redesignated parts.

Part	Present 15 CFR designation		Part	New 15 CFR designation
350	§§ 350.1-350.93	Defense Priorities and Allocations	700	§§ 700.1-700.93.
		Reserved	701-704	
350	Schedules I and V		700	Schedules I and V.
350	Appendixes I and IV		700	Appendixes I and IV.
359	§§ 359.1-359.10	Effect of Imported articles on the National Security.	705	§§ 705.1-705.10.
		Reserved	706-709	

PART 700—[AMENDED]

2. The authority citation for newly designated Part 700 is revised to read as follows:

Authority: Secs. 101-103, 701-707, 709, and 713, Defense Production Act of 1950, Pub. L. 81-774, 64 Stat. 798, as amended (50 U.S.C. app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 18 FR 4939, 3 CFR 1979 Comp. p. 114, as amended; E.O. 12148, 44 FR 43239, 3 CFR 1979 Comp. p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; DMO-12, 44 CFR 329; and DMO-13, 44 CFR 330.

PART 705—[AMENDED]

3. The authority citation for newly designated Part 705 is revised to read as follows:

Authority: Sec. 232, Trade Expansion Act of 1962 (19 U.S.C. 1862), as amended (Pub. L. 100-418, 102 Stat. 1107), Reorg. Plan No. 3 of 1979 (44 FR 69273, Dec. 3, 1979); E.O. 12188 of Jan. 2, 1980 (45 FR 989, Jan. 4, 1980).

Dated: December 30, 1988.

John A. Richards,

Acting Principal Deputy Assistant Secretary for Export Administration.

Joan McEntee,

Deputy Under Secretary for International Trade.

[FR Doc. 89-175 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Rule Review Under Regulatory Flexibility Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of rules and availability of report.

SUMMARY: The Commission has completed its review of eight rules that were issued under the Flammable Fabrics Act and were in existence on January 1, 1981. The purpose of this review was to determine whether rules issued before enactment of the Regulatory Flexibility Act, which have a significant economic impact on a substantial number of small businesses, should be continued without change, amended or revoked.

After consideration of the rules, comments about them from the public, economic and other factors affecting firms subject to the rules, and other relevant information, the Commission has determined that while some of the rules reviewed may have had a significant economic impact on a substantial number of small businesses, no further action with respect to any of these rules is warranted under the Regulatory Flexibility Act. A report on this rule review, entitled "Regulatory Flexibility Act Review, Flammable Fabrics Act," is available on request.

ADDRESS: Requests for copies of the report should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Warren J. Prunella, Associate Executive Director for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6962; or Allen F. Brauninger, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, telephone: (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) became effective on January 1, 1981, and generally requires Federal agencies to evaluate the economic impact of their rules on small entities, including small businesses. Section 610 of the RFA (5 U.S.C. 610) requires agencies to review all rules in existence on January 1, 1981, which have or will have a significant economic impact on a substantial number of small businesses. The purpose of this review is to determine whether the rules under consideration should be continued without change, amended, or revoked, consistent with the purposes of the statutes which they implement, to minimize any significant economic impact they may have on small businesses. Section 610 of the RFA requires consideration of the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments about the rule received from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with state and local government rules;

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

In the **Federal Register** of September 14, 1981 (46 FR 45621) the Commission published its plan for reviewing all rules existing on January 1, 1981, which may have had, or which could be expected to have, a significant economic impact on small businesses. That notice identified eight rules issued under provisions of the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) which would be reviewed in accordance with section 610 of the RFA.

In the **Federal Register** of February 2, 1984 (49 FR 4103), the Commission began its review of existing FFA rules by publishing a notice which listed eight rules issued under provisions of the FFA which may have an economic impact on small businesses. The rules listed in that notice were:

16 CFR Part No.	Title
1608	General Rules and Regulation Under the Flammable Fabrics Act.
1610	Standard for the Flammability of Clothing Textiles.
1611	Standard for the Flammability of Vinyl Plastic Film.
1615	Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X.
1616	Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14.
1630	Standard for the Surface Flammability of Carpets and Rugs.
1631	Standard for the Surface Flammability of Small Carpets and Rugs.
1632	Standard for the Flammability of Mattresses (and Mattress Pads).

The notice gave a brief description of each rule, the need for the rule, and its legal basis. It also invited public comment on the rules under consideration.

In response to the notices of September 14, 1981, and February 4, 1984, the Commission received one comment from the National Knitwear Manufacturers Association which was not addressed to any specific FFA rule, but which cautioned against amending any FFA rule to make its provisions more stringent. The Commission also received one comment from the Carpet and Rug Institute requesting an extension of the time in which to comment on the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs. The Commission extended the period of time for receipt of comments on all FFA rules, but received no substantive comments on any of the FFA rules.

After considering the comments, the provisions of the rules, an analysis of economic factors and other conditions affecting firms which are subject to the rules under review, and the factors specified by section 610 of the RFA, the Commission has concluded that while some of these rules may have had a significant economic effect on small businesses, no further action with regard to any of these rules is warranted under the RFA.

The Commission has published a report on this RFA rule review. It describes the purpose and requirements of each rule; lists economic factors and other conditions affecting firms which are subject to each rule; and analyses each rule by application of the five factors specified in section 610 of the RFA.

This report, entitled "Regulatory Flexibility Act Review, Flammable Fabrics Act Rules," is available without charge by writing to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

Dated: January 3, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89–332 Filed 1–6–89; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, 284, 385, and 388

[Docket No. RM87–17–000]

Natural Gas Data Collection System; Availability of Print Software for FERC Form Nos. 2, 2–A, 14, and 16

Issued January 3, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Availability of Print Software for FERC Form Nos. 2, 2–A, 14, and 16.

SUMMARY: Software to print FERC Form Nos. 2, 2–A, 14 and 16 data required to be filed on an electronic medium in accordance with Order Nos. 493 (53 FR 15023 (April 27, 1988)) and 493–A (53 FR 30027 (August 10, 1988)) is now available. The software released today reflects the revisions adopted at the Order No. 493 implementation conference on September 12 and 13, 1988. This software is being made available for testing purposes and written comments are requested from all interested persons. An "INFO" file is included on the diskette(s) for each form and identifies those areas where additional software development and/or instructions are required.

DATE: The software is available as of January 3, 1989.

ADDRESS: Requests for copies of the sotfware and the accompanying User Guide should be directed to: Public Reference Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, (202) 357–8118.

FOR FURTHER INFORMATION CONTACT: Brooks Carter, Office of Pipeline and Producer Regulation, Data Analysis

Branch, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 7010–D, Washington, DC 20426, (202) 357–8995 or (202) 357–8844.

SUPPLEMENTARY INFORMATION: The software to produce a hard copy printout of FERC Form Nos. 2, 2–A, 14 and 16, when filed in accordance with the record formats for those forms as reissued on October 7, 1988 (FERC Form Nos. 14 and 16), and October 26, 1988 (FERC Form Nos. 2 and 2–A), is now available. The software provided is for testing purposes. If the software does not adequately provide a hard copy of the data filed on an electronic medium, respondents are still required to supplement the filings with hard copies of the particular pages or schedules not printed by the software in order to meet the filing requirements of 16 CFR Part 260.

The programming language used for the print software is ANSI 1974 Standard COBOL. The diskette(s) for each form contains the executable files which can be run on an IBM-compatible PC with at least 512K RAM and DOS 3.0 (or later version). A user's guide, a test data file and a sample output file are also included with the software for each form. The user's guide is also available on hard copy.

In testing the software for FERC Form Nos. 8 and 11, it is staff's experience that the majority of the problems in using the Commission-provided software were the result of improper input data formats. The Commission staff requests that respondents carefully examine the formats and character positions of the input data records before contacting staff. If print software problems continue to occur, the Commission staff encourages users to provide written comments as to the exact nature of the problem and submit them to Brooks Carter, Office of Pipeline and Producer Regulation, Room 7010, Federal Energy Regulatory Commission, 825 North Capitol, Street NE., Washington, DC 20426.

The software is available from the Commission's Public Reference Branch through its photocopy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426. All software is available on 5.25" (1.2MB) double-sided, high density diskettes.

Persons requesting this software, in person or by written request, should specify: "Software, Docket Number RM87–17–000, January 3, 1989", and the diskette set(s), or individual diskette numbers desired. Each of the following sets contains the executable programs, test input data and sample output for the indicated form. Appendix A identifies the files contained on each diskette.

SET A. RM87–17–000: Print Software for FERC Form No. 2, January 3, 1989, Diskette Nos. A1–A5.

SET B. RM87–17–000: Print Software for FERC Form No. 2–A, January 3, 1989, Diskette Nos. B1–B2.

SET C. RM87–17–000: Print Software for FERC Form No. 14, January 3, 1989, Diskette Nos. C1.

SET D. RM87–17–000: Print Software for FERC Form No. 16, January 3, 1989, Diskette Nos. D1–D2.

The software is available without charge. However, the Commission's copy contractor has a copy fee of $5.00 per diskette.

Lois D. Cashell

Secretary.

APPENDIX A.—DIVISION OF FILES ON DISKETTES

Set A: RM87–17–000: Print Software for FERC Form No. 2, January 3, 1989, Diskettes A1–A4

* * * Diskette A1: Schedule F4 Executable Programs, Schedule F7 Executable Programs:

USERGUID.TXT		
F2PROBS.TXT		User's Guide Info File.
FORM2F4.BAT		
NEWMNF4.EXE	Driver	Form 2 Schedule F4 Executable Programs.
FM2F4A.EXE	pp. 1–109	Do.
FM2F4B.EXE	pp. 110–119	Do.
FM2F4C.EXE	pp. 120–123	Do.
FORM2F7.BAT		
MAINF7.EXE	Driver	Form 2 Schedule F7 Executable Programs.
FM2F7A.EXE	pp. 350–502	Do.
FM2F7B.EXE	pp. 503–511	Do.
FM2F7C.EXE	pp. 512–519	Do.
FM2F7D.EXE	p. 520	Do.
FM2F7E.EXE	pp. 521–555	Do.

* * * Diskette A2: Schedule F5 Executable Programs:

FORM2F5.BAT		
MAINF5.EXE	Driver	Form 2 Schedule F5 Executable Programs.
FM2F5A.EXE	pp. 200–201	Do.
FM2F5B.EXE	pp. 204–209	Do.
FM2F5C.EXE	pp. 213–218	Do.
FM2F5D.EXE	p. 219	Do.
FM2F5E.EXE	pp. 220–225	Do.
FM2F5F.EXE	pp. 226–231	Do.
FM2F5G.EXE	pp. 233–251	Do.
FM2F5H.EXE	pp. 252–257	Do.
FM2F5I.EXE	pp. 258–263	Do.
FM2F5J.EXE	pp. 264–269	Do.
FM2F5K.EXE	pp. 270–277	Do.

* * * Diskette A3: Schedule F6 Executable Programs:

FORM2F6.BAT		
MAINF6.EXE	Driver	Form 2 Schedule F6 Executable Programs.
FM2F6A.EXE	pp. 300–301	Do.
FM2F6B.EXE	pp. 302–309	Do.
FM2F6C.EXE	pp. 310–311	Do.
FM2F6D.EXE	pp. 312–315	Do.
FM2F6E.EXE	pp. 320–325	Do.
FM2F6F.EXE	p. 326	Do.
FM2F6G.EXE	p. 327	Do.
FM2F6H.EXE	pp. 328–333	Do.
FM2F6I.EXE	pp. 335–340	Do.

* * * Diskette A4: Form 2 Test Input Data, Form 2 Sample Output Files:

FORM02.DAT	Form 2 Test Input File.
F4OUT	Test Output Files for Form 2, Schedules F4–F7.
F5OUT	Do.
F6OUT	Do.
F7OUT	Do.

Set B: RM87–17–000: Print Software for FERC Form No. 2–A, January 3, 1989, Diskettes B1–B2

* * * Diskette B1: Form 2–A Executable Programs:

USERGUID.TXT		User's Guide.
F2APROBS.TXT		Info File.
FORM2A.BAT		Do.
FM2MNF8.EXE	Driver	Form 2A—All Schedules Executable Programs.
FM2A0.EXE	p. 3	Do.
FM2A1.EXE	pp. 4–11	Do.
FM2A2.EXE	pp. 12–23	Do.
FM2F4B.EXE	pp. 110–119	Do.
FM2F5B.EXE	pp. 204–209	Do.
FM2F5D.EXE	p. 219	Do.
FM2F6A.EXE	pp. 300–301	Do.
FM2F6C.EXE	pp. 310–311	Do.
FM2F6E.EXE	pp. 320–325	Do.
FM2F6G.EXE	p. 327	Do.
FM2F7D.EXE	p. 520	Do.
FM2F7E.EXE	p. 521	Do.

* * * Diskette B2: Form 2–A Test Input Data, Form 2–A Sample Output Files:

FORM2A.DAT	Test Input File.
F2AOUT	Test Output File.

Set C: RM87–17–000: Print Software for FERC Form No. 14, January 3, 1989, Diskette C1

* * * Diskette C1: Form 14 Executable Programs, Form 14 Test Input Data, Form 14 Sample Output File:

USERGUID.TXT	User's Guide.
FORM14.BAT, FM14.EXE.	Executable Program.
FM14	COBOL Source Code.
FORM14.DAT	Test Input File.
F14OUT	Test Output File.

Set D: RM87-17-000: Print Software for FERC Form No. 16, January 3, 1989, Diskette D1-D2

* * * Diskette D1: Form 16 Executable Programs:

USERGUID.TXT		User's Guide.
F16PROBS.TXT		Info File.
FORM16.BAT		Do.
FM16MN.EXE	Driver	Form 16—Schedule R7 Executable Programs.
FM16A.EXE	ID Page, Schedules I and V	Do.
FM16B.EXE	Schedules II and VI	Do.
FM16C.EXE	Schedules III and VII	Do.
FM16D.EXE	Schedules IV and VIII	Do.
FM16E.EXE	Schedule IX	Do.

* * * Diskette D2: Form 16 Test Input Data, Form 16 Sample Output File:

F16IN	Test Input File.
F16OUT	Test Output File.

[FR Doc. 89-386 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Employee Pension Benefit Plans

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Public notice.

SUMMARY: The Commission hereby publishes this notice stating the position to be taken by the Commission in final regulations under section 4(i) of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, relating to the effective date of section 4(i).

FOR FURTHER INFORMATION CONTACT: Paul E. Boymel, Office of Legal Counsel, Room 214, EEOC, 2401 E Street, NW., Washington, DC 20507, (202) 634-6423.

Notice

The Equal Employment Opportunity Commission (EEOC) and the Internal Revenue Service (IRS) will issue final regulations under the continued benefit accrual provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA), that will generally provide that no year of service (including years of service before 1988) may be disregarded because of age in determining a participant's benefit under a defined benefit plan for plan years beginning after 1987.

OBRA amended section 411(b) of the Internal Revenue Code of 1986 (Code), section 4(i) of the Age Discrimination in Employment Act of 1967 (ADEA), and section 204(a) of the Employee Retirement Income Security Act of 1974 (ERISA) to, in general, prohibit employee pension benefit plans from reducing or discontinuing benefit accruals, or the rate of benefit accruals, on behalf of an employee because of the employee's attainment of any age. Under section 9204(a)(1) of OBRA, these benefit accrual provisions "shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply."

EEOC published proposed regulations under section 4(i) of the ADEA in the **Federal Register** on November 27, 1987 (52 FR 45360) and IRS published proposed regulations under section 411(b) of the Code in the **Federal Register** on April 11, 1988 (53 FR 11867).

The proposed IRS regulations provided, in general, that effective for plan years beginning in 1988 and thereafter, for a participant who has at least 1 hour of service for the plan sponsor in a plan year beginning in 1988 or thereafter, a defined benefit plan may not disregard any years of service, including years of service before 1988, because of age in determining the participant's plan benefit. The proposed EEOC regulations provided that such years of service before 1988 could be disregarded, as long as such years of service occurred after the participant reached the plan's normal retirement age.

Section 9204(d) of OBRA provides that the final regulations of EEOC and IRS (and the Department of Labor) "shall each be consistent with the others." The agencies have coordinated the issues closely, recognizing the lead regulatory authority given to IRS in several sections of OBRA. As a result of the interagency coordination, and consideration of the comments received by EEOC and IRS during the comment periods of the proposed regulations, the agencies have determined that the final regulations to be issued by EEOC and IRS under OBRA will adopt the position taken in the proposed IRS regulations with respect to years of service that may not be disregarded because of age in determining benefits under noncontributory defined benefit plans. Thus, the final regulations to be issued by EEOC and IRS will provide that the OBRA benefit accrual rules apply to all years of service (including years of service before January 1, 1988) completed by a participant in a noncontributory defined benefit plan who has at least 1 hour of service with the plan sponsor in a plan year beginning on or after January 1, 1988. IRS announced this position in Notice 88-126 issued on December 9, 1988 and published in the Internal Revenue Bulletin on December 27, 1988, 1988-52 I.R.B.

For purposes of this notice, a noncontributory defined benefit plan is a defined benefit plan that does not provide for mandatory employee contributions. No inference should be drawn as to the position that may be taken in final EEOC or IRS regulations regarding defined benefit plans that provide for mandatory employee contributions.

With respect to defined contribution plans, the final regulations to be issued by the two agencies will provide that the OBRA benefit accrual rules do not require that retroactive allocations be made to the accounts of participants for plan years beginning before January 1, 1988. However, such final regulations will provide that if a defined contribution plan allocates amounts to the accounts of participants under a formula that takes prior service into account, no year of service (including years of service before January 1, 1988) may be disregarded because of age in determining allocations to the accounts of participants for plan years beginning on or after January 1, 1988.

This notice is consistent with IRS Notice 88-126.

Signed on behalf of the Commission this 20th day of December, 1988, in Washington, DC.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 89-343 Filed 1-6-89; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110, 162, and 165

[CGD 05-88-17]

Special Anchorage Areas, Anchorage Grounds, and Regulated Navigation Area, Hampton Roads, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the anchorage regulations in 33 CFR 110.168 and the regulated navigation area in 33 CFR 165.501 for Hampton Roads, Virginia. The need for revision to the anchorage regulations stems primarily from several construction and navigation improvement projects that have been completed, are in progress, or are planned for Hampton Roads. The need for revision to the regulated navigation area regulations stems from a regulatory project being undertaken by Coast Guard Headquarters that will revise all of the Coast Guard's anchorage regulations and separate out those regulations that regulate vessel operations outside of specified anchorage grounds. Those provisions not related to specific anchorage

grounds are being moved to Part 165. In addition to many substantive changes, outdated and confusing language has been removed, anchorages have been redesignated consecutively, and the regulations have been made easier to understand.

EFFECTIVE DATE: February 8, 1989.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. T. Ormes, Port and Vessel Safety Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6388.

SUPPLEMENTARY INFORMATION: On June 3, 1988, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (53 FR 20339). Interested persons were requested to submit comments and six (6) comments were received.

Drafting Information

The drafters of this notice are LT D. T. Ormes and LT W. J. Wetzel, Project Officers, Port and Vessel Safety Branch, Fifth Coast Guard District, LTJG J. G. Anderson, Project Officer, Aids to Navigation and Waterways Management Branch, Fifth Coast Guard District, and CAPT R. J. Reining and LCDR R. K. Kutz, Project Attorneys, Fifth Coast Guard District Legal Staff.

Discussion of Comments

Of the six (6) comments received, four (4) were received from the Commander, Naval Base Norfolk, Virginia. The first comment requested a prohibition against anchoring within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove. This prohibition is added in paragraph 165.501(d)(1)(vi). The other three comments addressed corrections to errors of plotted positions for various anchorages. These corrections are incorporated in the final rule. The final rule also contains a number of other minor position coordinate changes. These changes reflect the more accurate positions the Coast Guard was able to obtain using the U.S. Army Corps of Engineers' computer-aided position plotter. In addition to the comments from the Navy, one comment suggested that the regulations should more clearly designate naval anchorages, especially the naval explosive anchorage (Anchorage G). This suggestion has been incorporated in the final rule. Finally, a comment by the U.S. Army Corps of Engineers requested that a circular berth be added to Anchorage Berths K–1 and K–2. After consultation, however, this request was withdrawn and the berths were not added. Editorial corrections have been made to § 165.501 (b)(2), (b)(3), (b)(4), and (d)(4), to clarify the boundaries of the Thimble Shoal Channel, Thimble Shoal North Auxiliary Channel, and Thimble Shoal South Auxiliary Channel. The coordinates that define the anchorages in § 110.168 have been placed in a tabular format, to make it easier to read and plot the anchorages. Editorial changes also have been made throughout the final rule, including, but not limited to, placing the paragraphing and paragraph references in proper form for publication in the **Federal Register**, and conforming the length restrictions in § 110.168(f)(8) to those in paragraph (f)(7) of the same section.

Finally, § 110.168 (d)(4) and (d)(5) have been changed to cover individuals on board vessels handling dangerous cargo or military explosives while in an anchorage, not just those loading such cargo or explosives, to bring the requirement to have a pass or other form of identification into line with the rest of the requirements in § 110.168(d), which are not limited solely to loading operations.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transporation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. A particular effort has been made to eliminate as many existing regulations as possible, to reduce the burden on commercial and recreational vessel operators. As a result, anchoring in most of the Hampton Roads area is less restrictive than before; smaller vessels are permitted to anchor in many more areas than before. The only adverse effect expected from these regulations is the loss of the use of a small portion of the medium and shallow depth anchorage ground available in Hampton Roads. This results from the construction of the I–664 Bridge Tunnel. Sufficient anchorage ground will be available for vessels that, in the past, have used the anchorage grounds that have been discontinued.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they do not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been thoroughly reviewed by the Coast Guard and it has been determined to be excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B.

Federalism Assessment

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 162

Navigation (water), Vessels.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, 33 CFR Parts 110, 162, and 165 are amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in s110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.168 of Part 110 is revised to read as follows:

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

(a) *Anchorage Grounds*—(1) *Cape Henry Anchorage.* Anchorage A (Naval Anchorage). The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55'33.0" N	76°02'47.0" W
36°57'02.8" N	76°03'02.6" W
36°56'45.0" N	76°01'30.0" W
36°55'54.0" N	76°01'37.0" W.

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages*—(i) *Anchorage B (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57'58.0" N	76°06'07.0" W
36°57'11.0" N	76°03'02.1" W
36°55'48.8" N	76°03'14.0" W
36°56'31.8" N	76°06'07.0" W
36°57'04.0" N	76°06'07.0" W
36°57'08.5" N.	76°06'24.5" W.

(ii) *Anchorage C (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'54.8" N	76°09'41.5" W
36°58'18.8" N	76°07'18.0" W
36°57'27.0" N	76°07'37.5" W
36°58'04.0" N	76°10'00.0" W.

(iii) *Anchorage D (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'49.0" N	76°10'32.8" W
36°58'04.0" N	76°10'02.1" W
36°57'31.2" N	76°07'54.8" W
36°55'24.1" N	76°08'28.8" W.

(iv) *Anchorage E (Commercial Explosive Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'58.7" N	76°13'47.0" W
36°59'08.2" N	76°10'33.8" W
36°58'13.0" N	76°10'51.8" W
36°59'02.0" N	76°14'10.2" W.

(A) *Explosive Handling Berth E–1: (Explosives Anchorage Berth):* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°59'05.0" N	76°11'23.0" W

(3) *Hampton Roads Anchorages*—(i) *Anchorage F, Hampton Bar.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'51.6" N	76°19'12.0" W
36°59'25.2" N	76°18'48.5" W
36°58'49.1" N	76°19'33.8" W
36°59'25.0" N	76°20'07.0" W.

(A) *Anchorage Berth F–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°59'16.7" N	76°19'39.0" W.

(B) *Anchorage Berth F–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°59'31.8" N	76°19'16.0" W.

(ii) *Anchorage G, Hampton Flats (Naval Explosives Anchorage).* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°59'25.0" N	76°20'07.0" W
36°58'49.1" N	76°19'33.8" W
36°57'41.4" N	76°21'07.7" W
36°57'34.6" N	76°21'26.7" W
36°57'31.1" N	76°22'01.9" W
36°58'07.0" N	76°22'03.0" W
36°58'54.8" N	76°21'42.6" W

(A) *Explosives Handling Berth G–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°57'50.0" N	76°21'37.0" W

(B) *Explosives Handling Berth G–2.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'14.0" N	76°21'01.5" W.

(C) *Explosives Handling Berth G–3.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'34.5" N	76°20'31.0" W.

(D) *Explosives Handling Berth G–4.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
36°58'53.4" N	76°20'05.0" W.

(iii) *Anchorage H, Newport News Bar.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°58'07.0" N	76°22'03.0" W.
36°57'31.1" N	76°22'01.9" W.
36°57'18.0" N	76°24'11.2" W.
36°57'38.3" N	76°24'20.0" W.
36°57'51.8" N	76°22'31.0" W.

(4) *James River Anchorages*—(i) *Anchorage I, Newport News.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'06.7" N	76°24'44.3" W.
36°56'22.6" N	76°24'28.0" W.
36°56'03.0" N	76°24'37.0" W.
36°57'53.7" N	76°26'41.5" W.
36°58'23.0" N	76°27'11.0" W
36°58'48.5" N	76°27'11.0" W
36°58'35.4" N	76°26'38.4" W
36°57'51.7" N	76°26'02.8" W
36°57'30.6" N	76°25'34.5" W.

(A) *Anchorage Berth I–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'08.5" N	76°25'21.6" W

(A) *Anchorage Berth I–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	Longitude
36°57'22.4" N	76°25'47.7" W.

(ii) *Anchorage J, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'21.0" N	76°22'22.1" W
36°56'46.5" N	76°22'39.3" W
36°56'25.3" N	76°23'48.0" W
36°57'10.2" N	76°24'09.9" W

(iii) *Anchorage K, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'55.8" N	76°20'31.9" W
36°57'07.9" N	76°20'32.2" W
36°56'48.8" N	76°20'32.2" W.
36°55'59.9" N	76°22'11.7" W.
36°55'59.9" N	76°24'00.0" W.
36°56'25.3" N	76°23'48.0" W.
36°56'46.5" N	76°22'39.3" W
36°57'21.0" N	76°22'22.1" W
36°57'28.1" N	76°21'11.7" W.

(A) *Anchorage Berth K–1.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'58.1" N	76°20'31.5" W
36°57'08.0" N	76°20'32.2" W
36°57'28.1" N	76°21'11.7" W

(B) *Anchorage Berth K–2.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°57'23.4" N	76°21'58.5" W
36°57'28.1" N	76°21'11.7" W
36°57'15.0" N	76°20'46.4" W
36°57'02.1" N	76°21'09.5" W

(C) *Anchorage Berth K–3.* The waters bounded by the arc of a circle with a radius of 300 yards and with the center located at:

Latitude	Longitude
36°57'12.9" N	76°22'14.2" W

(iv) *Anchorage Berth L, Craney Island Flats.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°56'48.8" N	76°20'20.1" W
36°56'04.2" N	76°20'23.7" W
36°55'59.9" N	76°22'11.7" W

(5) *Norfolk Harbor Channel Anchorages*—(i) *Anchorage M.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°55'37.6" N	76°19'48.1" W
36°55'22.1" N	76°19'48.1" W
36°55'20.5" N	76°20'14.9" W
36°55'36.8" N	76°20'13.6" W

(ii) *Anchorage N.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°54'35.3" N	76°19'47.5" W
36°54'03.9" N	76°19'45.0" W
36°53'55.0" N	76°20'09.0" W
36°54'43.5" N	76°20'18.0" W
36°54'47.2" N	76°20'17.7" W

(iii) *Anchorage O.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°53'28.0" N	76°19'16.3" W
36°53'00.0" N	76°19'29.9" W
36°53'04.9" N	76°20'01.2" W
36°53'28.0" N	76°20'05.1" W

(6) *Elizabeth River Anchorages*—(i) *Anchorage P, Lambert's Point.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°52'41.0" N	76°20'07" W
36°52'39.5" N	76°20'37.8" W
36°52'18.8" N	76°20'34.3" W
36°52'22.2" N	76°20'03.8" W

(ii) *Anchorage Q.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°52'17.8" N	76°19'38.8" W
36°52'01.1" N	76°19'15.5" W
36°51'56.4" N	76°19'21.7" W
36°52'12.6" N	76°19'45.1" W.

(iii) *Anchorage R, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°51'45.7" N	76°19'31.5" W
36°51'45.8" N	76°19'20.7" W
36°51'37.8" N	76°19'24.3" W
36°51'32.5" N	76°19'31.1" W
36°51'40.7" N	76°19'37.3" W
36°51'45.7" N	76°19'31.5" W

(iv) *Anchorage S, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°51'42.1" N	76°19'15.5" W
36°51'33.1" N	76°19'02.6" W
36°51'31.9" N	76°19'17.0" W.

(v) *Anchorage T, Hospital Point.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°51'05.4" N	76°19'18'22.4" W
36°50'54.2" N	76°17'52.2"22.4" W
36°50'36.7" N	76°17'52.8" W
36°50'33.6" N	76°17'58.8" W
36°50'49.3" N	76°18'09.0" W
36°50'50.3" N	76°19'18'07.8" W
36°50'56.2" N	76°18'12.5" W
36°51'01.8" N	76°18'32.3" W

(7) *Anchorage U, The Hague.* The waters of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(b) *Definitions.* As used in this section:

(1) "Dangerous cargo" means "certain dangerous cargo" as defined in § 160.203 of this title.

(2) "Military explosives" means "military explosives" as defined in 46 CFR 146.29–11.

(c) *General Regulations.* (1) Except as otherwise provided, this section applies to vessels over 65 feet long and vessels carrying or handling dangerous cargo or military explosives while anchored in an anchorage ground described in that section.

(2) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains a permit from the Captain of the Port.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or the anchoring of other vessels may not occupy an anchorage, unless the vessel obtains a permit from the Captain of the Port.

(4) The Captain of the Port may, upon application, assign a vessel to a specific berth within an anchorage for a specified period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If an application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit with which the vessel must comply.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor shall get underway at once or signal for a tug. The vessel shall move to its new location in a prompt manner.

(9) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time shall have two anchors in place with a mooring swivel, unless the Captain of the Port shall waive this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at a mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage shall be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or I–664 Bridge Tunnel shall be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or I–664 Bridge Tunnel if its steering or main propulsion equipment is impaired.

(d) *Regulations for Vessels Carrying or Handling Dangerous Cargoes or Military Explosives.* (1) Paragraph (d) of this section applies to any vessel, except a naval vessel, carrying or handling dangerous cargoes or military explosives.

(2) Unless otherwise directed by the Captain of the Port, a vessel handling or carrying dangerous cargoes or military explosives must be anchored or moored within Anchorage Berth E–1.

(3) Any vessel used in connection with loading or unloading dangerous cargo or military explosives in an anchorage, including tugs and stevedore boats, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every individual having business on board a vessel that is handling dangerous cargo or military explosives while in an anchorage, other than members of the crew, to have a pass issued by the Captain of the Port or other form of identification prescribed by the Captain of the Port.

(5) Every individual having business on board a vessel that is handling dangerous cargo or military explosives while in an anchorage, other than members of the crew, shall present the pass or identification prescribed by paragraph (d)(4) of this section to any Coast Guard boarding officer who request it.

(6) The Captain of the Port may revoke at any time a pass issued under the authority of paragraph (d)(4) of this section.

(7) A non-self-propelled vessel carrying dangerous cargo or military explosives shall have a tug in attendance at all times while at anchor.

(8) A vessel that is carrying or handling dangerous cargo or military explosives while at anchor shall display by day a red flag in a prominent location and by night a fixed red light.

(e) *Quarantine Anchorage Regulations.* (1) Anchorage Berth K–3 is the "Quarantine Anchorage".

(2) Any vessel that requires examination by quarantine, customs, or immigration authorities, but whose draft or size prevents it from using Anchorage Berth K–3, may anchor in another anchorage that it is otherwise authorized to use, if the vessel notifies the Captain of the Port and the agency that ordered the vessel to the "Quarantine Anchorage".

(f) *Regulations for Specific Anchorages.* (1) *Anchorage A.* Except for a naval vessel, military support vessel,

or vessel in an emergency situation, a vessel may not anchor in Anchorage A without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage A.

(2) *Anchorages B and C.* Except for a naval vessel, a vessel may not anchor in Anchorage B or C without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage B or C.

(3) *Anchorage D.* Except for a naval vessel or vessel in an emergency situation, a vessel may not anchor in Anchorage D without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorage D.

(4) *Anchorage E.* (i) A vessel may not anchor in Anchorage E without a permit issued by the Captain of the Port.

(ii) The Captain of the Port shall give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may at any time revoke a permit to anchor in Anchorage E issued under the authority of paragraph (f)(4)(i) of this section.

(iv) A vessel may not anchor in Anchorage Berth E–1 unless it is carrying or handling dangerous cargo or military explosives.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel carrying or handling dangerous cargo or military explosives.

(5) *Anchorage F.* A vessel less than 700 feet long or having a draft less than 40 feet may not anchor in Anchorage F without the permission of the Captain of the Port.

(6) *Anchorage G.* (i) Except for a naval vessel, a vessel may not anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring military explosives in Anchorage G, naval vessels must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels carrying military explosives are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°58'34" N., longitude 76°21'12" W., no other vessel, except a vessel that is receiving or offloading military explosives, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility.

(iv) Whenever a vessel is handling or transferring military explosives while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Base Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) A vessel located within Anchorage G may not handle or transfer military explosives within 400 yards of Norfolk Harbor Entrance Reach.

(vi) A vessel may not handle or transfer military explosives within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring military explosives.

(vii) A vessel may not handle or transfer military explosives within 850 yards of Anchorage F or H.

(7) *Anchorage I—Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth I–1 or I–2 without the permission of the Captain of the Port.

(8) *Anchorage K*—(i) *Anchorage Berths K–1 and K–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth K–1 or K–2 without the permission of the Captain of the Port.

(ii) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities may anchor in the Anchorage Berth K–3.

(iii) Unless directed by the Captain of the Port, a vessel that does not require an examination by public health, customs, or immigration authorities may not anchor in Anchorage Berth K–3.

(iv) Every vessel using Anchorage Berth K–3 shall be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and shall promptly vacate Anchorage Berth K–3 after being examined and released by authorities.

(v) When any vessel using Anchorage Berth K–3 is under the charge of a pilot, the pilot shall remain on board while the vessel is in Anchorage Berth K–3.

(vi) Any non-self-propelled vessel using Anchorage Berth K–3 shall have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

(9) *Anchorage P.* (i) A vessel waiting to be loaded may not remain in Anchorage P longer than 48 hours, except when non-availability of loading facilities, inclement weather, ice conditions, or other circumstances beyond the vessel's control prohibit it from moving.

(ii) A vessel loaded with cargo may not remain in Anchorage P for more than 12 daylight hours without permission from the Captain of the Port.

(10) *Anchorage T.* Portions of this anchorage are a special anchorage area under § 110.72aa of this Title during marine events regulated under § 100.501 of this Title.

(11) *Anchorage U.* (i) A vessel may not anchor in Anchorage U unless it is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage U without the permission of the Captain of the Port.

* * * * *

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§§ 162.55 and 162.60 [Removed]

2. Sections 162.55 and 162.60 are removed.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. Section 165.501 is revised to read as follows:

§ 165.501 Chesapeake Bay Entrance and Hampton Roads, Virginia and Adjacent Waters—Regulated Navigation Area.

(a) *Regulated Navigation Area.* The waters enclosed by the shoreline and the following lines are a Regulated Navigation Area:

(1) A line drawn across the entrance to Chesapeake Bay between Cape Charles Light and Cape Henry Light.

(2) A line drawn across the Chesapeake Bay between Old Point Comfort Light and Cape Charles City Range "A" Rear Light.

(3) A line drawn across the James River along the eastern side of the U.S. Route 17 highway bridge, between Newport News and Isle of Wight County, Virginia.

(4) A line drawn across Chuckatuck Creek along the northern side of the north span of the U.S. Route 17 highway bridge, between Isle of Wight County and Suffolk, Virginia.

(5) A line drawn across the Nansemond River along the northern side of the Mills Godwin (U.S. Route 17) Bridge, Suffolk, Virginia.

(6) A line drawn across the mouth of Bennetts Creek, Suffolk, Virginia.

(7) A line drawn across the Western Branch of the Elizabeth River along the eastern side of the West Norfolk Bridge, Portsmouth, Virginia.

(8) A line drawn across the Southern Branch of the Elizabeth River along the northern side of the I–64 highway bridge, Chesapeake, Virginia.

(9) A line drawn across the Eastern Branch of the Elizabeth River along the western side of the west span of the Campostella Bridge, Norfolk, Virginia.

(10) A line drawn across the Lafayette River along the western side of the Hampton Boulevard Bridge, Norfolk, Virginia.

(11) A line drawn across Little Creek along the eastern side of the Ocean View Avenue (U.S. Route 60) Bridge, Norfolk, Virginia.

(12) A line drawn across Lynnhaven Inlet along the northern side of the Shore Drive (U.S. Route 60) Bridge, Virginia Beach, Virginia.

(b) *Definitions.* In this section:

(1) "CBBT" means the Chesapeake Bay Bridge Tunnel.

(2) "Thimble Shoal Channel" consists of the waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17, thence to Lighted Buoy 19, thence to Lighted Buoy 21, thence to Lighted Buoy 22, thence to Lighted Buoy 18, thence to Lighted Buoy 2, thence to the beginning.

(3) "Thimble Shoal North Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the north side of Thimble Shoal Channel, the southern boundary of which extends from Thimble Shoal Channel Lighted Buoy 2 to Lighted Buoy 18.

(4) "Thimble Shoal South Auxiliary Channel" consists of the waters in a rectangular area 450 feet wide adjacent to the south side of Thimble Shoal Channel, the northern boundary of which extends from Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Lighted Gong Buoy 17 thence to Lighted Buoy 19, thence to Lighted Buoy 21.

(c) *Applicability.* This section applies to all vessels operating within the Regulated Navigation Area, including naval and public vessels, except vessels that are engaged in the following operations:

(1) Law Enforcement.

(2) Servicing aids to navigation.

(3) Surveying, maintenance, or improvement of waters in the Regulated Navigation Area.

(d) *Regulations.*—(1) *Anchoring restrictions.*

(i) No vessel over 65 feet long may anchor or moor in this Regulated Navigation Area outside an anchorage designated in § 110.168 of this title, unless:

(A) The vessel has the permission of the Captain of the Port.

(B) The vessel is carrying explosives for use on river or harbor works or on other work under a permit issued by the District Engineer, Corps of Engineers, and the vessel is anchored in or near the vicinity of the work site. The District Engineer shall prescribe the quantities of explosives allowed on the vessel and the conditions under which the vessel may store or handle explosives. The vessel may not anchor unless a copy of the permit and instructions relating to the carriage and handling of explosives from the Corps of Engineers to the vessel or contractor are provided to the Captain of the Port before the vessel anchors.

(ii) A vessel may anchor in a channel with the permission of the Captain of the Port, if the vessel is authorized by the District Engineer to engage in the recovery of sunken property, to lay or repair a legally established pipeline or cable, or to engage in dredging operations.

(iii) A vessel engaged in river and harbor improvement work under the supervision of the District Engineer may anchor in a channel, if the District Engineer notifies the Captain of the Port in advance of the start of the work.

(iv) Except as provided in paragraphs (d)(1)(ii) and (iii) of this section, a vessel may not anchor in a channel unless it is unable to proceed without endangering the safety of persons, property, or the environment.

(v) A vessel that is anchored in a channel because it is unable to proceed without endangering the safety of persons, property, or the environment, shall:

(A) Not anchor, if possible, within a cable or pipeline area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Anchor near the edge of the channel, if possible.

(D) Not interfere with the free navigation of any channel.

(E) Not obstruct the approach to any pier.

(F) Not obstruct aids to navigation or interfere with range lights.

(G) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(vi) A vessel may not anchor within the confines of Little Creek Harbor, Desert Cove, or Little Creek Cove without the permission of the Captain of the Port. The Captain of the Port shall consult with the Commander, Naval Amphibious Base Little Creek, before granting permission to anchor within this area.

(2) *Secondary Towing Rig Requirements.* (i) A vessel over 100 gross tons may not be towed in this Regulated Navigation Area unless it is equipped with a secondary towing rig, in addition to its primary towing rig, that:

(A) Is of sufficient strength for towing the vessel.

(B) Has a connecting device that can receive a shackle pin of at least two inches in diameter.

(C) Is fitted with a recovery pickup line led outboard of the vessel's hull.

(ii) A tow consisting of two or more vessels, each of which is less than 100 gross tons, that has a total gross tonnage that is over 100 gross tons, shall be equipped with a secondary towing rig between each vessel in the tow, in addition to its primary towing rigs, while the tow is operating within this Regulated Navigation Area. The secondary towing rig must:

(A) Be of sufficient strength for towing the vessels.

(B) Have connecting devices that can receive a shackle pin of at least two inches in diameter.

(C) Be fitted with recovery pickup lines led outboard of the vessels' hulls.

(3) *Anchoring Detail Requirements.* A self-propelled vessel over 100 gross tons, which is equipped with an anchor or anchors (other than a tugboat equipped with bow fenderwork of a type of construction that prevents an anchor being rigged for quick release), that is underway within two nautical miles of the CBBT or the I–664 Bridge Tunnel shall station its personnel at locations on the vessel from which they can anchor the vessel without delay in an emergency.

(4) *Draft Limitations.* A vessel drawing less than 25 feet may not enter the Thimble Shoal Channel, unless the vessel is crossing the channel. Channel crossings shall be made as perpendicular to the channel axis as possible.

(5) *Traffic Directions.* (i) Except when crossing the channel, a vessel in the Thimble Shoal North Auxiliary Channel shall proceed in a westbound direction.

(ii) Except when crossing the channel, a vessel in the Thimble Shoal South

Auxiliary Channel shall proceed in an eastbound direction.

(6) *Restrictions on Vessels With Impaired Maneuverability.*—(i) *Before entry.* A vessel over 100 gross tons, whose ability to maneuver is impaired by hazardous weather, defective steering equipment, defective main propulsion machinery, or other damage, may not enter the Regulated Navigation Area without the permission of the Captain of the Port, unless the vessel is attended by one or more tugboats with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area.

(ii) *After entry.* The master of a vessel over 100 gross tons, which is underway in the Regulated Navigation Area, shall, as soon as possible, do the following, if the vessel's ability to maneuver becomes impaired for any reason:

(A) Report the impairment to the Captain of the Port.

(B) Unless the Captain of the Port waives this requirement, have one or more tugboats, with sufficient total power to ensure the vessel's safe passage through the Regulated Navigation Area, attend the vessel.

(7) *Requirements for Navigation Charts, Radars, and Pilots.* No vessel over 100 gross tons may enter the Regulated Navigation Area, unless it has on board:

(i) Corrected charts of the Regulated Navigation Area.

(ii) An operative radar during periods of reduced visibility; or

(iii) A pilot or other person on board with previous experience navigating vessels on the waters of the Regulated Navigation Area.

(8) *Emergency Procedures.* (i) Except as provided in paragraphs (d)(8) (ii) and (iii) of this section, in an emergency any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, property, or the environment.

(ii) A vessel over 100 gross tons with an emergency that is located within two nautical miles of the CBBT or I–664 Bridge Tunnel (other than a self-propelled vessel that is capable of getting underway in 30 minutes, has sufficient power to avoid any bridge, tunnel island, or vessel, and whose maneuverability is not impaired by a steering equipment or main propulsion defect):

(A) Shall notify the Captain of the Port of its location and the nature of the emergency, as soon as possible.

(B) May not anchor outside an anchorage designated in § 110.168 of this title, unless the vessel is unable to proceed to an anchorage without endangering the safety of persons, property, or the environment.

(C) Shall make arrangements for one or more vessels to attend the vessel, with sufficient power to keep the vessel in position.

(iii) If a vessel over 100 gross tons must anchor outside an anchorage because the vessel is unable to proceed without endangering the safety of persons, property, or the environment, the vessel shall:

(A) Not anchor, if possible, within a cable or pipeline area.

(B) Not obstruct or endanger the passage of any vessel.

(C) Not interfere with the free navigation of any channel.

(D) Not obstruct the approach to any pier.

(E) Not obstruct aids to navigation or interfere with range lights.

(F) Move to a designated anchorage or get underway as soon as possible or when directed by the Captain of the Port.

(9) *Vessel Speed Limits on Little Creek.* A vessel may not proceed at a speed over five knots between the Route 60 bridge and the mouth of Fishermans Cove (Northwest Branch of Little Creek).

(10) *Vessel Speed Limits on the Southern Branch of the Elizabeth River.* A vessel may not proceed at a speed over six knots between the junction of the Southern and Eastern Branches of the Elizabeth River and the Norfolk and Portsmouth Belt Line Railroad Bridge between Chesapeake and Portsmouth, Virginia.

(11) *Restrictions on Vessel Operations During Aircraft Carrier and Other Large Naval Vessel Transits of the Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or that is anchored, no vessel may, without the permission of the Captain of the Port, come within or remain within 500 yards from a naval aircraft carrier or other large naval vessel, which is restricted in its ability to maneuver in the confined waters, while the aircraft carrier or large naval vessel is transiting the Elizabeth River between the Norfolk Naval Base, Norfolk, Virginia, and the Norfolk Naval Shipyard, Portsmouth, Virginia.

(ii) The permission required by paragraph (d)(11)(i) of this section may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or from the Coast Guard patrol commander.

(iii) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by paragraph (d)(11) of this section.

(12) *Restrictions on Vessel Operations During Liquefied Petroleum Gas Carrier Movements on the Chesapeake Bay and Elizabeth River.* (i) Except for a vessel that is moored at a marina, wharf, or pier or that is anchored, and which remains moored or at anchor, no vessel may, without the permission of the Captain of the Port, come within or remain within 250 yards from the port and starboard sides and 300 yards from the bow and stern of a vessel that is carrying liquefied petroleum gas in bulk as cargo, while the gas carrier transits between Thimble Shoal Lighted Buoy 3 and the Atlantic Energy Terminal on the Southern Branch of the Elizabeth River.

(ii) The permission required by paragraph (d)(12)(i) of this section may be obtained from a designated representative of the Captain of the Port, including the duty officer at the Coast Guard Marine Safety Office, Hampton Roads, or from the Coast Guard patrol commander.

(iii) A vessel that has carried liquefied petroleum gas in a tank is carrying the liquefied petroleum gas as cargo for the purposes of paragraph (d)(12)(i) of this section, unless the tank has been gas freed since liquefied petroleum gas was last carried as cargo.

(iv) The Captain of the Port issues a Broadcast Notice to Mariners to inform the marine community of scheduled vessel movements that are covered by paragraph (d)(12) of this section.

(e) *Waivers.* (1) The Captain of the Port may, upon request, waive any regulation in this section, if the Captain of the Port finds that the vessel can be operated safely.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations.

(f) *Control of Vessels Within the Regulated Navigation Area.* (1) When necessary to prevent damage, destruction, or loss of any vessel, the I–664 Bridge Tunnel, or the CBBT, the Captain of the Port may direct the movement of vessels or issue orders requiring vessels to anchor or moor in specific locations.

(2) If needed to further the maritime or commercial interests of the United States, the Captain of the Port may order a vessel to move from the location in which it is anchored to another location within the Regulated Navigation Area.

(3) The master of a vessel within the Regulated Navigation Area shall comply with any orders or directions issued to the master's vessel by the Captain of the Port.

Dated: December 23, 1988.

A.D. Breed,

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

[FR Doc. 89-347 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 117

[CGD7-88-48]

Temporary Drawbridge Operation Regulations; New River, South Fork, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Southwest 12th Street (Davie Boulevard) drawbridge at Fort Lauderdale, Florida, by extending the hours of the existing regulation to provide draw openings on 15-minute intervals. This temporary change is being made to ease severe traffic congestion and to further evaluate proposed permanent regulations.

DATES: These temporary regulations become effective January 3, 1989, and terminate on March 4, 1989. Comments must be received within this 60-day temporary regulation period.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 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, of the Brickell Plaza Federal Building, 909 SE. 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the proposed permanent 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. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Prompt implementation is necessary to alleviate a severe vehicular traffic problem and to evaluate the proposed permanent rule. The Commander, Seventh Coast Guard District, will evaluate all communications received, the overall effect of this temporary regulation change, and determine if a permanent regulation change is necessary.

Drafting Information

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

Discussion of Temporary Regulations

The Davie Boulevard drawbridge presently opens on signal, except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

This change which adds 15-minute scheduled openings from 7 a.m. to 7 p.m., daily, is intended to space draw openings and virtually eliminate "back to back" openings which can contribute significantly to vehicular traffic delays during these periods. Prompt implementation of this temporary rule has been requested by the City Manager of Fort Lauderdale and Congressman E. Clay Shaw, Jr.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is temporarily 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); 33 CFR 117.43.

2. Paragraph (a) of § 117.315 is revised to read as follows for the period January 3, 1989 through March 4, 1989. Because this is a temporary rule, this revision will not appear in the Code of Federal Regulations.

§ 117.315 New River, South Fork.

(a) *Davie Boulevard (Southwest 12th Street) bridge, mile 0.9 at Fort Lauderdale.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Friday, the draw need not open; and from 7 a.m. to 7 p.m., daily, with the exception of the authorized closed periods, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. Public vessels of the United States, regularly scheduled cruise vessels, tugs with tows, and vessels in distress shall be passed through the draw as soon as possible.

* * * * *

Dated: December 22, 1988.

Martin H. Daniell,

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

[FR Doc. 89-348 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-14-M

---

33 CFR Part 165

[CGD7 87-38]

Security Zone; Port Canaveral Harbor, Cape Canaveral, FL; Correction

AGENCY: Coast Guard, DOT.

ACTION: Notice of final rule; correction.

SUMMARY: The Coast Guard is correcting errors in the final rules which appeared in the **Federal Register** on October 3, 1988 (53 FR 38718), which established a security zone at Cape Canaveral, Florida.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, Tel: (904) 791-2648, between 7:30 AM and 4:00 PM., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard published the final rule on October 3, 1988 (53 FR 38718) which established a security zone at Cape Canaveral, Florida. The final rule contained several errors which are corrected by this notice.

The following corrections are made in CGD7 87-38, the Regulations implementing the security zone at Cape Canaveral, Florida, published in the **Federal Register** on October 3, 1988 (53 FR 38718).

1. On page 38718, third column, line 9, change the latitude from 28°24'36" to 28°24'30".

2. On page 38718, third column, line 22, change the word "of" to read "off".

Dated: November 21, 1988.

R. J. O'Pezio,

Captain, U.S. Coast Guard, Captain of the Port, Jacksonville, Florida.

[FR Doc. 89-349 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Decrease in Amount of Time VA Will Allow a Loan Holder To Begin Terminating Defaulted Loans

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

SUMMARY: The Veterans Administration (VA) is correcting its loan guaranty regulations to correct previously published information concerning regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA.

EFFECTIVE DATE: March 21, 1988.

FOR FURTHER INFORMATION CONTACT: C. G. Verenes, Acting Chief, Directives Management Division (731), Paperwork Management and Regulations Service, Veterans Administration, 810 Vermont Avenue NW., Washington, DC (202) 233–4244.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1988 (53 FR 4977–78), and subsequently in the **Federal Register** of October 25, 1988 (53 FR 42950), the VA published its loan guaranty regulations to decrease the amount of time allowed a loan holder to begin termination proceedings on a defaulted VA guaranteed loan after being notified to do so by the VA. In that final regulation, and subsequently in the correction published on October 25, 1988, the VA inadvertently published an outdated version of § 36.4319(f). The VA hereby corrects that error.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Loan Programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

C. G. Verenes,

Acting Chief, Directives Management Division.

38 CFR 36.4319(f) is revised to read as follows:

§ 37.4319 Legal proceedings.

* * * * *

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Administrator do so, or does not prosecute such action with reasonable diligence, the Administrator may at the Administrator's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Administrator. The Administrator may also intervene in, or bring and prosecute to completion any action or proceeding, in the Administrator's name or in the name of the holder, which the Administrator deems necessary or appropriate. The Administrator shall pay, in advance if necessary, any court costs or other expenses incurred by the Administrator or properly taxed against the Administrator in any such action to which the Administrator is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4113 of this part), or otherwise collect from the holder any such expenses incurred by the Administrator because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice to any other rights, remedies, or defenses, in law or in equity, available to the Administrator.

(Authority: 38 U.S.C. 1816)

[FR Doc. 89–288 Filed 1–6–89; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3498–2]

Approval and Promulgation of Implementation Plans; OH

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA finds that Ohio's carbon monoxide (CO) State Implementation Plan (SIP) for Cuyahoga County does not meet the requirements of part D of the Clean Air Act (CAA), because it lacks a vehicle inspection and maintenance program (I/M) which will achieve the minimum emission reduction requirement for CO. USEPA is, therefore, disapproving that plan. This final disapproval of the CO plan results in the imposition of the CAA section 110(a)(2)(I) construction restriction on major stationary sources of CO in Cuyahoga County. USEPA also finds that the State has failed to adequately implement the I/M portion of its conditionally approved Part D CO SIP and has not submitted, nor made reasonable efforts to submit, a SIP revision which considers each of the elements of section 172 of the CAA. This final nonimplementation finding results in the cutoff of CAA grants and imposition of a construction moratorium on major stationary sources of CO in Cuyahoga County. See sections 176(b) and 173(4) of the CAA. The final finding of a lack of reasonble efforts to submit a plan also results in the cutoff of CAA grants, as well as Federal funding for certain highway construction projects. See section 176(a) of the CAA.

USEPA is taking no action at this time on the I/M portion of Ohio's Part D SIP for the Cincinnati and Cleveland areas as it relates to ozone because the State has taken concrete steps to implement an I/M program to achieve minimum required emission reduction levels for hydrocarbons and to meet the ozone I/M requirements of the CAA.

EFFECTIVE DATE: This rule will become effective on March 10, 1989.

ADDRESS: Copies of materials relating to USEPA's action may be inspected during normal business hours at the following address. (It is recommended that you telephone Delores Sieja, at (312) 886–6038, before visiting the Region V office.)

U.S. Environmental Protection Agency, Regulatory Analysis Section, Air and Radiation Branch, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, (Regarding SIPs) at (312) 886–6038, John Paskevicz, (Regarding I/M) at (312) 886–6084.

SUPPLEMENTARY INFORMATION: On July 14, 1987 (52 FR 26413), USEPA proposed to find that Ohio's CO SIP for Cuyahoga County does not meet the requirements of Part D of the CAA, that the State has failed to implement its commitment to adopt the required I/M program for CO, and that the State has failed to submit, and to make reasonable efforts to submit, a Part D SIP revision which considers each of the elements of section 172 of the CAA for CO. Furthermore, USEPA proposed to impose Federal funding and construction restrictions under sections 176(a), 176(b), and 173(4), for Cuyahoga County. A detailed discussion regarding USEPA's basis for this action and a detailed description of Ohio's progress since 1979 are contained in the July 14, 1987, notice. Ohio has not yet authorized legislation for a CO I/M control program for Cuyahoga County. Today, USEPA is taking final action on that proposal and is incorporating, by reference, all the information discussed in that notice and the technical support document associated with that notice. The only

information USEPA is repeating here today includes a brief summary of the effect of each of the construction and funding restrictions which will become effective in Cuyahoga County as a result of this final action.

Construction and Funding Restrictions

Section 176(a) restrictions are applicable if the USEPA Administrator finds that a State has failed to submit, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172 of the Act.

As a result of section 176(a) restrictions, the Secretary of Transportation may not approve any projects or award any grants in Cuyahoga County under Title 23 of the United States Code, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. See the April 10, 1980, Policy Notice, 45 FR 24692.

Pursuant to section 176(a) and section 176(b), USEPA will not approve any contracts or award any grants authorized under the CAA as follows:

1. Section 176(a) restrictions on contract approval and grant awards are applicable if a State has not submitted an implementation plan which considers each of the elements required by section 172 of the CAA, or if the State has not made reasonable efforts toward submitting such an implementation plan.

2. Section 176(b) restrictions on grant awards are applicable where the State, general purpose local government or regional agency, as applicable, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised SIP.

The CAA funding restriction formula USEPA will use for implementing this sanction in Ohio would add all CAA funds which would normally be awarded to all levels of government in the State, and will withhold from that total a percentage which is equal to the percentage of the State's population residing in the nonimplementation I/M urbanized areas. Because the State is the only level of government responsible for I/M implementation in Cuyahoga County, USEPA will subtract from the amount to be withheld from the State any funds that are granted directly to local government agencies in the urbanized area, because USEPA believes these local funds are exempt from the funding restrictions.

Section 173(4) provides that, for a pollutant in question, a construction moratorium for major stationary sources and major modification shall be imposed in any nonattainment area where a State is not carrying out an approved plan. (40 CFR 54.24(b)). Therefore, pursuant to section 173(4) of the CAA, no major stationary source of CO can be constructed, and no major modification of a CO source can occur in Cuyahoga County. This restriction will apply to any permit not yet issued as of the effective date of this notice, even if a completed permit application has been submitted to the State Agency.

Today's disapproval also results in the automatic imposition of a construction moratorium on major stationary sources and modifications to major sources in the subject nonattainment area, in accordance with the requirements of section 110(a)(2)(I) of the CAA and 40 CFR 52.24(a). This moratorium will affect those permits applied for after the date of imposition of the moratorium.

USEPA has discretion to withhold certain grants, pursuant to section 316 of the CAA, for construction of sewage treatment works available under Section 201(g) of the Clean Water Act (33 U.S.C. 1251 et. seq.). USEPA is not, however, imposing these restrictions on Cuyahoga County at this time. USEPA will publish a notice of proposed rulemaking and will provide an opportunity for comment, if it determines that imposing these additional funding restrictions on sewage treatment works are appropriate.

Public Hearing and Comment Period

A public hearing on the proposed action to impose Federal funding and construction restrictions under sections 176(a), 176(b), and 173(4) of the CAA was held at the Anthony T. Celebrezze Federal Building in Cleveland, Ohio, on September 1, 1987. The hearing was announced in the July 14, 1987 **Federal Register** Notice of Proposed Rulemaking. Ten speakers made comments at the hearing. Additionally, three commenters submitted written comments. The transcript of the public hearing and the written comments are all available in the docket for this rulemaking action. Below are summaries of the comments raised and USEPA's responses.

Comment

The State of Ohio objected to the proposed discretionary portions of the sanctions as proposed in the **Federal Register** notice of July 14, 1987. The State contends that the CAA requires new source sanctions in cases such as this, but leaves discretionary the highway funding cuts and air program funding sanctions. Four other areas of the country with proposed sanctions for CO received only the proposed new source bans, not the highway or 105 fund cuts. Ohio does not believe that all of the proposed sanctions are appropriate for Cuyahoga County. Another commenter asked if the hearing panel could clarify why USEPA believes that the construction and funding restrictions are nondiscretionary with respect to Cuyahoga County.

USEPA Response

The other areas of which USEPA did not propose to impose section 176(a) and (b) sanctions are areas that have already submitted and implemented an I/M program. The State of Ohio has not yet developed and implemented an appropriate I/M program for CO in Cuyahoga County. Thus, these other States have met the CAA requirement to implement an appropriate I/M program; but they still have an air quality problem based on monitored ambient air quality violations.

Therefore, in these areas USEPA intends to impose only the construction sanctions.

Additionally, it is USEPA's interpretation of the Clean Air Act that once an area has an approved Part D SIP, the highway funding limitations of section 176(a) are no longer applicable. In that sense, Cuyahoga County, without an approved Part D SIP, is in a different position from most of these other areas.

Furthermore, section 176(b) on its face appears to call for an automatic cutoff of Federal air program grant funds to a State that is not implementing its SIP. As discussed above, Ohio is not implementing its SIP, contrary to the situation for most other areas.

Please note, however, that USEPA's proposed Post-1987 Ozone and Carbon Monoxide Policy (52 FR 45044, November 24, 1987) proposed to not use the section 176(b) sanction in a State not implementing its SIP, where the sanction interferes with the goal of achieving plan implementation and where the State is making necessary progress in producing an adequate SIP. In the case of Ohio, air program grant funding sanctions are appropriate even under the proposed Post-1987 Policy, because the State is not making progress in producing an adequate SIP. Additionally, because there is not an I/M program to implement, the funding sanctions will have no effect on plan implementation. Imposition of this sanction will serve as an incentive to the State to adopt a tailpipe I/M program. Over the last several years, the State has made little progress in developing and implementing a tailpipe I/M program in Cuyahoga County.

Comment

The State of Ohio also commented that there is currently no ambient air quality data available to indicate an actual air quality problem for Cuyahoga County.

USEPA Response

The CO data submitted to USEPA since 1980 show that there were violations of the standard at the 8907 Carnegie Avenue monitoring site in 1981 and 1983. Additionally, a violation of the standard was monitored at 1020 Euclid in 1986. It should also be noted that monitors recording violations of the standard (8907 Carnegie Avenue and 1020 Euclid) have not been maintained for sufficient time after the monitored violations to show that violations have not reoccurred. Both monitors were removed shortly after the standard violations were recorded. Such action raises significant questions about claims that violations of the CO standard are no longer occurring in Cuyahoga County. In addition, CO modelling for high traffic intersections in Cuyahoga County showed the potential for CO standard violations at a number of nonmonitored intersections in 1986.

Comment

The State also commented that Ohio EPA has not been given an adequate opportunity to demonstrate the attainment of the CO standard.

USEPA Response

The State of Ohio has been attempting to demonstrate attainment of the CO standard, since the submittal of a June 1982 SIP revision request which attempted to demonstrate attainment by December 31, 1982. USEPA subsequently disapproved this action on March 25, 1986 (51 FR 10198). USEPA also disapproved Ohio's request to redesignate Cuyahoga County to attainment for CO on November 23, 1988 (53 FR 47531). Ohio EPA has had sufficient opportunity to make such a demonstration.

Comment

Several commenters supported the proposed sanctions and requested USEPA to take whatever action is necessary to ensure that a system is in place which will assure that air quality standards are met, as required by the Clean Air Act.

USEPA Response

USEPA agrees.

Comment

One commenter recommended conditional sanctions and passage of a tax to reduce pollution.

USEPA Response

USEPA does not have authority to impose conditional sanctions. However, the following information should provide information useful to the commenter in understanding when sanctions will be lifted.

In the July 14, 1987, proposal regarding the imposition of sanctions, USEPA solicited specific comments regarding what action the State would have to take before USEPA should lift these restrictions. No comments were received. Therefore, the restrictions will remain in effect as follows:

(1) The 176(a) restrictions will be removed when USEPA determines that Ohio is making reasonable efforts to submit an I/M plan which considers all of the elements required in section 172 of the Clean Air Act. The 176(a) restrictions will also be removed if the area for which sanctions are applied is designated attainment by the USEPA. (2) The 176(b) and section 173(4) restrictions will be removed when USEPA determines that the state is implementing its I/M program. (3) The 110(a)(2)(I) construction sanctions will be removed upon final approval of the SIP.

The removal of the sanctions from this area shall be by **Federal Register** notice and a 30-day public comment period will be provided prior to final action. Funding limitations shall remain in effect until publication of the final finding removing the limitations.

The issue concerning taxes is an issue for consideration by the State and local governments and is not applicable to today's rulemaking.

Comment

One commenter questioned if there would be any inspection of trucks or buses as part of the inspection and maintenance program and how would this affect the air quality.

USEPA Response

States may choose the mixture of vehicles they wish to test in order to get the CAA required emission reductions; and they may, in making this decision, choose to do tailpipe inspections of heavy-duty trucks and buses. Some States that run I/M programs test all classes of vehicles, others only test light-duty passenger cars and light-duty trucks; but testing of heavy-duty vehicles is an option, and additional emission reductions can be achieved through the inclusion of these vehicles. As with inspecting light-duty vehicles are requiring maintenance for those that are emitting above the standards, inspecting heavy-duty vehicles such as gasoline powered buses or heavy-duty trucks would also bring about emission reductions and lead to better air quality.

Comment

One commenter believed that Lake County and surrounding areas should also have some kind of sanctions, because they contribute to the problem by sending their workers into Cleveland and because they have a substantial amount of industry.

USEPA Response

The CAA provides USEPA with the authority to impose funding and construction restrictions in areas designated as nonattainment, when States fail to submit or implement the required SIP revisions under Part D of the CAA. Lake County is currently designated as attainment for CO, as codified in the Code of Federal Regulations. Additionally, Lake County and the surrounding counties have an approved SIP for CO. There is currently no basis to impose construction and funding restrictions in either Lake County or other areas surrounding Cuyahoga County.

Comment

One commenter noted that the modest and localized nature of CO problems in Cuyahoga County warant implementation of transportation control measures aimed at moving traffic more efficiently during high volume periods, in lieu of a county-wide vehicle emissions inspection program.

USEPA Response

There is no certainty that the CO problem in Cuyahoga County is modest or localized. Ohio EPA directed a study, using an USEPA contractor, to evaluate carbon monoxide hot-spots at a number of intersections in Cleveland. The results indicated that predicted values of carbon monoxide exceeded the standard at a number of high traffic volume intersections. The predicted high values of CO are sufficient to indicate that the standard has not been attained. The SIP to control emissions of CO included a description of transportation control measures expected to be implemented to reduce the emissions of CO. These measures, however, provide just a fraction of the total reduction required to attain the standard. Transportation control measures by themselves are not sufficient to be

substituted for a tailpipe I/M program. For areas such as Cuyahoga County, where an extension of the attainment deadline for CO was granted, the CAA requires the States to meet the additional statutory requirements, which include the development and implementation of an I/M program.

Comment

One commenter continues to believe that remedial actions short of a full-scale tailpipe I/M Program in Cuyahoga County, should be sufficient to attain CO standards in the county.

USEPA Response

Under the CAA, Cuyahoga County is an extension area for CO. The State was unable to demonstrate attainment of the CO national ambient air quality standard in December 1982; and, therefore, as required by the CAA the State committed to implement an I/M program. Therefore, the State must implement an I/M program to fulfill Clean Air Act and Agency policy requirements (i.e., to achieve the minimum emission reduction requirements for CO).

Comment

One commenter questioned if having three exceedances of the CO standard in an eight-quarter period is a trivial thing or is it indicative of severe problems.

USEPA Response

The primary NAAQS for CO is violated if, more than once in a calendar year, maximum CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 10 milligrams per cubic meter of air (10 mg/m^3), or (2) the maximum allowable 1-hour concentration of 40 mg/m^3. Therefore, three exceedances of the standard in a 2-year period (8 quarters) is a violation of the CO standard. The NAAQS for CO were established to protect the public health and welfare. Therefore, USEPA considers there is a potential health problem in the Cleveland area. It should be noted that the monitor at the 8907 Carnegie Avenue site, where a recent violation of the standard was recorded, was taken out of service shortly after the violation occurred. The monitor was not located in a high traffic density location where it is likely additional violations would be recorded. In a recent modeling study which the State Legislature directed the Ohio EPA to complete, the results indicated potential violations at a number of high traffic intersections. A copy of this study is contained in the docket for this rulemaking action.

Comment

One commenter stated he strongly support USEPA's discretionary decision not to impose Clean Water Act sewage treatment grant restrictions on Cuyahoga County as a component of the CAA sanctions. The commenter gave specific examples of how this funding has led to water quality improvements.

USEPA Reponse

In todays notice, USEPA is not taking action to withhold certain grants, pursuant to section 316 of the CAA, for construction of sewage treatment works. USEPA will publish a notice of proposed rulemaking and will provide an opportunity for comment if it later determines that imposing these Federal funding restrictions on sewage treatment works is necessary.

Comment

One commenter asked the following question. How would the implementation of a tailpipe inspection program which imposes additional requirements on inspection stations, dovetail with the anti-tampering program currently programmed for full scale implementation in Cuyahoga County later this year? Stations currently involved with the anti-tampering program may be unable or unwilling to participate in the tailpipe program.

USEPA Response

The question implies that a tailpipe program would follow a similar design of the anti-tampering inspection program. As with the anti-tampering program, the State has the freedom to design the tailpipe program in any number of configurations. As in the past, the State legislature will decide what elements will be contained in the tailpipe program. USEPA's main concern is that the program meets minimum emission reductions for carbon monoxide, and, when finally approved by the legislature, will be expeditiously implemented.

Conclusion

USEPA finds that Ohio's CO SIP for Cuyahoga County does not meet the requirements of Part D of the CAA, that the State has failed to implement its commitment to adopt the required I/M program for CO, and that the State has failed to submit, and to make reasonable efforts to submit, a Part D SIP revision which considers each of the elements of section 172 of the CAA.

Therefore, USEPA is imposing Federal funding and construction restrictions under sections 110(a)(2)(I), 176(a), 176(b) and 173(4), for Cuyahoga County.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 10, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: December 15, 1988.

Lee M. Thomas,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1887 is amended by adding new paragraph (d) to read as follows:

§ 52.1887 Control strategy: Carbon monoxide.

* * * * *

(d) *Disapproval.* The carbon monoxide (CO) State Implementation Plan (SIP) for Cuyahoga County is disapproved because it lacks a vehicle inspection and maintenance program (I/M) which will achieve the minimum emission reduction requirement for CO. Therefore, funding and construction restrictions for CO under sections 110(a)(2)(I), 176(a), 176(b), and 173(4) of the Clean Air Act have been imposed for Cuyahoga County, Ohio.

[FR Doc. 89–297 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 270

[FRL–3502–3]

Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 10, 1987 (52 FR 46946), EPA promulgated standards for owners and operators of new and existing hazardous waste management units which were not previously covered under the existing RCRA regulations. This notice clarifies portions of the preamble and corrects several errors in the regulatory language of the December 10, 1987 rule.

EFFECTIVE DATE: This rule is effective on January 9, 1989.

FOR FURTHER INFORMATION CONTACT: For general information on this rulemaking, contact the RCRA hotline, Office of Solid Waste (WH-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

For information on technical aspects of the Subpart X rule, contact: Kent Anderson, Land Disposal Branch, Waste Management Division, Office of Solid Waste (OS-321), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4654.

For information on permit submission or review, contact Frank McAlister, Permits Branch, Permits and State Programs Division, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2223, or the appropriate EPA regional office.

SUPPLEMENTARY INFORMATION:

I. Background

On December 10, 1987 (52 FR 46946) the Agency promulgated a new set of standards under Subpart X of 40 CFR Part 264. The Subpart X standards are applicable to owners and operators of miscellaneous hazardous waste management units that are not covered by the other permitting regulations in Subparts I–O of Part 264. The Agency, and any State that adopts equivalent authorities, may issue permits to miscellaneous waste management units in accordance with Subpart X standards. Examples of the kinds of units encompassed by Subpart X include thermal treatment; chemical, physical, and biological treatment; and open burning and detonation.

The December 10, 1987 rule contained several errors in the promulgated regulatory language. Several questions have also arisen concerning the preamble discussion of Federal and State rules in implementing the Subpart X standards. In addition, the preamble discussion misstated the effect of the land disposal restrictions on the in situ treatment of restricted wastes in Subpart X units. The purpose of this notice is to correct these errors and to clarify the preamble discussion.

II. Discussion of Corrections and Clarifications

A. Regulatory Language in § 270.14

In the December 10, 1987 rule, the language of § 270.14 printed in the Federal Register inadvertently failed to include two recent amendments to that section. Today's notice reinstates the correct regulatory language. First, § 270.14(b)(5) inadvertently referred to § 264.194 rather than to §§ 264.193(i) and 264.195. This mistake is corrected by this notice. Second, the first sentence of § 270.14(b)(13) is amended to read as follows: "A copy of the closure plan and where applicable, the post-closure plan as requried by §§ 264.112, 264.118, and 264.197." In the December 10 rule, the reference to § 264.197 was inadvertently omitted.

B. Federal Authority to Issue Subpart X Permits

Since the December 10, 1987 publication of the Subpart X rule, the Agency has been contacted by States and permittees who requested clarification on the language contained in Section VII.B (52 FR 46961). The preamble states that this rule is a non-HSWA rule and is therefore not effective in authorized States. However, the preamble subsequently states that, pursuant to 40 CFR 264.1(f)(2), EPA has the authority to issue permits to Subpart X units in authorized States. Both statements are true; the following discussion clarifies this issue.

Subpart X of Part 264 was promulgated pursuant to pre-HSWA authority. Generally, with one exception discussed below (i.e., 40 CFR 264.1(f)(2)), new Federal permitting standards based on pre-HSWA authority are not effective in an authorized State until that State adopts equivalent or more stringent regulations as State law and EPA authorizes that State law change under section 3006 of RCRA. However, under § 264.1(f)(2), new Federal permitting standards issued under Part 264 may be applied to a facility (or units at a facility) which was not covered by permit standards when the State obtained authorization, and for which EPA promulgates standards under this Part after the State is authorized. Thus, § 264.1(f)(2) allows new units to be constructed and allows interim status units to receive permits, both of which would otherwise be foreclosed prior to State authorization for the substantive Part 264 standards involved.

Thus, in the situation here, without § 264.1(f)(2), Subpart X units could not be permitted by an authorized State under RCRA until the authorized State adopts and receives authorization for the Subpart X facility permit standards. This is so because even though the State is authorized to issue permits, there are no authorized substantive standards the State could apply if it were to issue a permit. To avoid this undesirable situation where permits are unavailable even though substantive Part 264 facility standards have been promulgated, under § 264.1(f)(2), EPA has the responsibility to permit these units until the State receives Subpart X authorization even though the Subpart X regulations are not HSWA regulations. This permitting authority applies to both new units and units currently under interim status. It also applies to Subpart X units at facilities that have other units (e.g., a landfill or storage tank), which may be permitted by the State under the authorized RCRA program.

C. Permit Application Deadlines for Subpart X Facilities

The Agency has also received questions regarding the applicability of the November 8, 1988 permit application deadline to interim status facilities regulated under Subpart X. Section 3005(c)(2)(C)(ii) provides that interim status for facilities which do not have land-based or incinerator units will terminate on November 8, 1992 if these facilities failed to submit a Part B permit application to the Agency by November 8, 1988. Of course, if EPA makes a final disposition of the permit application prior to November 8, 1992, the facility's interim status may no longer be at issue. Thus, the ultimate impact of filing a permit application after November 8, 1988 depends both on the statutory provision in section 3005(c)(2)(C)(ii) as well as the timing of any EPA final permit decision.

Also, the section 3005(c)(2)(C)(ii) permit application filing deadline applies only to those facilities that had, or should have had, interim status on or before November 8, 1984. Further, the Part B permit application deadline applies to only those units referenced, or that should have been referenced, in the facility Part A as of November 8, 1984. In summary, facilities with Subpart X units in interim status on November 8, 1984 are required to submit Part B permit applications with regard to those units by November 8, 1988, to ensure continued operation after November 1992. Failure to submit a Part B application for those units could result in loss of interim status on November 8,

1992. Facilities in States not yet authorized for Subpart X should contact the EPA Regional Office where they are located for further information.

D. Treatment of Land Disposal Restricted Wastes in Subpart X Units

The preamble to the December 10, 1987 rule stated that because of the land disposal restrictions on land based in-situ treatment "none of the in-situ treatment methods will be Subpart X units/technologies." (p. 46952, col. 3). While in many cases land disposal restrictions will foreclose the use of in-situ treatment without prior use of best demonstrated available technology for treatment, there are instances where in-situ treatment in a Subpart X unit may be allowed. An example is when the wastes were placed in the unit prior to the effective date of the land disposal restrictions for a particular waste code.

List of Subjects in 40 CFR Part 270

Administrative practice and procedures, Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Date: December 22, 1988.

Jonathan Z. Cannon,

Acting Assistant Administrator.

Therefore, Subchapter I of Title 40 is amended as follows.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

2. Section 270.14 is amended by revising paragraphs (b)(5) and (b)(13) to read as follows:

§ 270.14 Contents of Part B: General Requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, and 264.602.

* * * * *

(13) A copy of the closure plan and, where applicable, the post-closure plan required by §§ 264.112, 264.118, and 264.197. Include, where applicable, as part of the plans, specific requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.603.

[FR Doc. 89-141 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 716

[OPTS-84014C; FRL-3502-7]

Health and Safety Data Reporting Period Terminations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** of September 30, 1988 (53 FR 38642). The sunset date was inadvertently omitted for several chemicals and categories.

DATE: This document is effective January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1988 (53 FR 38642), EPA issued the Health and Safety Data Reporting Period Terminations final rule. The rule terminated the reporting periods for 37 chemical substances and 5 chemical categories and transferred 34 substances listed as example members of chemical categories from the list of substances found at 40 CFR 716.120(c) to 40 CFR 716.120(a). The sunset date for several chemicals was inadvertently omitted. This document also makes minor technical changes.

Dated: December 22, 1988.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR Part 716 is amended as follows:

PART 716—[AMENDED]

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

2. In § 716.120(a):

a. Under the sunset date column, insert "12/29/88" for the following CAS No. entries: 100-54-9, 111-21-7, 121-47-1, 140-66-9, 472-41-3, 563-54-2, 563-58-6, 1333-41-1, 3322-93-8, 18495-30-2, 19660-16-3, 26530-20-1, 61788-33-8, 68298-46-4, and 69009-90-1.

b. Add the following entry in CAS No. sequence: "75-56-9 . . . . . Oxirane, methyl- . . . . . 10/04/82 . . . . . 10/04/92."

c. Under the sunset date column, remove "06/01/09" and insert "06/01/97" for the CAS No. entry 1208-52-2.

d. Remove the entire CAS No. entry for "7390-81-0."

3. In § 716.120(c):

a. Under the sunset date column, insert "12/29/88" for the category alkyl epoxides and the following CAS No. entries under that category: 2855-19-8, 558-30-5, 3266-23-7, 3234-28-4, 67860-04-2, 2404-44-6, and 22092-38-2.

b. Under the category alkyl epoxides, remove the entire entry for "oxirane, methyl-."

c. Under the sunset date column, insert "12/29/88" for the category alkyltin compounds and the following CAS No. entries under that category: 25168-24-5, 26636-01-1, and 54849-38-6.

d. Under the category alkyltin compounds, for the CAS No. entry 54849-38-6, change the chemical spelling to read: "Monomethyltin tris(isooctyl mercaptoacetate)—Acetic acid, 2,2'2''-[(methylstannylidyne)tris(thio)]tris-triisoacetyl ester."

e. Under the sunset date column, insert "12/29/88" for the category chlorinated napthalenes and the following CAS No. entries under that category: 25586-43-0, 70776-03-3, 90-13-1, and 32241-08-0.

f. For the category ethyltoluenes, under the effective date column, remove "10/04/82" and insert "04/29/83" and under the sunset date column insert "12/29/88" for the category ethyltoluenes and the CAS No. entry under that category.

g. Under the sunset date column, insert "12/29/88" for the category halogenated alkyl epoxides and the following CAS No. entries under that category: 3132-64-7 and 38565-52-5.

h. Under the sunset date column, insert "12/29/88" for the following CAS No. entries under the category phenylenediamines (benzenediamines): 3663-23-8, 615-46-3, 42389-30-0, 68459-98-3, 68239-80-5, 6219-71-2, 20103-09-7, 1197-37-1, 67801-06-3, 68015-98-5, 68966-84-7, 614-94-8, 6219-67-6, 5131-58-8, 5042-55-7, 6219-77-8, 18266-52-9, 68239-82-7, 68239-83-8, 66422-95-5, 15872-73-8, and 65879-44-9.

[FR Doc. 89-300 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42092A; FRL-3503-7]

Testing Consent Order on Alkyl Phthalates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document announces that EPA has signed an enforceable testing Consent Order with Aristech Chemical Corporation (Aristech), BASF Corporation (BASF), Exxon Chemical Company (Exxon), Eastman Kodak Company (Kodak), and Witco Corporation, Humko Chemical Division (Witco). These companies have agreed to perform certain chemical fate and environmental effects tests on dimethyl phthalate (DMP; CAS No. 131-11-3), di-n-butyl phthalate (DnBP; CAS No. 84-74-2), dihexyl phthalate, (DHP; CAS No. 68515-50-4 and 84-75-3), di-2-ethylhexyl phthalate (DEHP; CAS No. 117-81-7), di-(heptyl, nonyl, undecyl) phthalate (D711P; CAS No. 68515-42-4), diisodecyl phthalate (DIDP; CAS No. 68515-49-1 and 26761-40-0), diundecyl phthalate (DUP; CAS No. 3648-20-2), and ditridecyl phthalate (DTDP; CAS No. 68515-47-9 and 119-06-2). These chemicals are added to the list of testing Consent Orders in 40 CFR 799.5000 for which the export notification requirements of 40 CFR Part 707 apply.

Depending on the results of these tests, two additional chemical substances, diethyl phthalate (DEP; CAS No. 84-66-2) and diisononyl phthalate (DINP; CAS No. 68515-48-0 and 28553-12-0), may also be tested, and if so would also be made subject to export notification requirements.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under procedures described in 40 CFR Part 790, Aristech, BASF, Exxon, Kodak, and Witco have entered into a testing Consent Order with EPA in which they have agreed to perform certain chemical fate and environmental effects tests for DMP, DnBP, DHP, DEHP, D711P, DIDP, DUP, and DTDP. This rule amends 40 CFR 799.5000 by adding these eight chemical substances to the list of chemical substances and mixtures subject to testing Consent Orders.

I. ITC Recommendation

In its Initial Report to EPA, published in the **Federal Register** of October 4, 1977 (42 FR 55026), the ITC recommended that the alkyl phthalates chemical category be considered for environmental effects testing.

The recommended environmental effects testing included chronic and reproductive effects testing with aquatic organisms, especially fish. EPA's health effects testing concerns for these chemicals are being examined separately and are not addressed in this notice.

EPA responded to the ITC's designation of the alkyl phthalates category by issuing a notice in the **Federal Register** (October 30, 1981; 46 FR 53775) announcing that it had decided not to require testing. EPA instead accepted a testing program sponsored by the Phthalate Esters Program Panel (PEPP) of the Chemical Manufacturers Association (CMA). The program included testing for both health and environmental effects; however, in keeping with the subject of this notice, discussion will focus on the environmental effects portion.

CMA proposed phased testing for environmental effects for 13 alkyl phthalates identified as being annually produced in quantities greater than ten million pounds, and for benzyl butyl phthalate (BBP). CMA's proposal included testing for aquatic toxicity, environmental transport and fate, and biodegradation of the alkyl phthalates and BBP. These were the environmental testing areas of concern to the Agency and to the ITC.

The program was designed to complete testing in two phases. Phase I tests were performed to determine acute toxicity to fish, aquatic invertebrates, and algae, and chronic toxicity to aquatic invertebrates. Biodegradation tests and tests to determine vapor pressure, water solubility and Koctanol/water were also performed. Phase I of testing has been completed. All of the data from these studies have been placed in the public file on alkyl phthalates and BBP (OPTS-42005) and are available for public inspection.

In Phase II of the testing, more advanced tests, including early life stage testing with fish, bioconcentration tests with oysters, soil and water biodegradation tests, and tests of soil transport were to be performed, if the results of the Phase I tests indicated a need for further testing. The tests and chemicals selected for Phase II testing were to be determined primarily by the results of the Phase I tests.

Testing under this negotiated testing agreement (NTA) was suspended when, in August 1984, a suit brought against EPA by the Natural Resources Defense Council (NRDC) resulted in the ruling that such negotiated testing programs were not legal substitutes for a test rule under section 4 of the Toxic Substances Control Act (TSCA) [*NRDC and AFL-CIO v. EPA*, 595 F Supp. 1255 (S.D.N.Y. 1984)]. Furthermore, BBP was specifically mandated for rulemaking, or for notice explaining why testing was not necessary. As a result, the Agency published a proposed rule for BBP requiring environmental effects and chemical fate testing (50 FR 36446; September 6, 1985). The proposed testing for BBP was completed and submitted to EPA by Monsanto Company, and the Agency has issued a **Federal Register** notice withdrawing the proposed rule (52 FR 41593; 29 October, 1987).

For the remaining phthalate esters recommended by the ITC, several of the Phase II tests noted in the NTA are still needed; namely, early life stage testing with fish and sediment transport (adsorption). EPA, in this final rule, announces that these environmental and chemical fate testing needs are being addressed by consent order. Health effects testing for this chemical category will be the subject of a future notice.

II. Testing Consent Order Negotiations

In the **Federal Register** of December 24, 1986 (51 FR 46718), and in accordance with the procedures established in 40 CFR 790.28, EPA requested persons interested in participating in or monitoring testing negotiations on alkyl phthalates to contact the Agency. EPA held public meetings with interested parties on January 7, 1987, February 12, 1987, June 3, 1987, and September 29, 1987 to discuss the testing appropriate for the alkyl phthalate chemical category. On November 11, 1988, EPA, Aristech, BASF, Exxon, Kodak, and Witco signed a testing Consent Order for certain alkyl phthalate esters. A Consent Order is not based on a formal finding and expedites testing, while retaining the same TSCA penalty provisions applicable under rulemaking. Under the Order, these companies have agreed to conduct or provide for the conduct of fish early life stage toxicity tests and adsorption isotherm tests. The specific test standards to be followed and the testing schedule for each test are included in the Order. Procedures for submitting study plans, modifying the Order, monitoring the testing and other provisions are also included in the Order.

III. Use and Exposure

The alkyl phthalates are a chemical category consisting of alkyl diesters of 1,2-benzenedicarboxylic acid. They typically are formed by esterifying phthalic acid anhydride with various alcohols. The compounds vary in size, depending on the alcohols used, from the short chain compound dimethyl phthalate to long-chain compounds such as ditridecyl phthalate. Mixed alcohols may also be used in the esterification process giving a combination of unsymmetrical alkyl diester compounds, such as D711 phthalate, whose side chains may consist of alkyl groups of 7, 9, or 11 carbons.

Phthalate esters are used as plasticizers in plastic products at different percentages depending on the mutual compatibilities of each and the degree of flexibility desired in the plastic product (Ref. 1). The chain lengths affect the properties of the compounds in a fairly predictible way; as the chain gets longer, water solubility and vapor pressure decrease, and K_{oc} increases (Ref. 1).

Many of the alkyl phthalates are produced in large volume, with some individual compounds having annual production volumes well in excess of 100 million pounds. The alkyl phthalates are primarily used as plasticizers in a wide variety of plastic products (although a few, such as diethyl phthalate, are used in such products as cosmetics), and releases into the environment may occur through waste streams from manufacturing facilities or from use and disposal of end products.

The 14 phthalate esters selected for testing in Phase I of the NTA were selected because they have individual annual production volumes of approximately 10 million pounds or greater. The chemicals selected for additional testing in this Consent Order represent a subset of those 14.

IV. Testing Program; Chemical Fate and Environmental Effects

With regard to untested phthalate esters, EPA believes that it can, for risk assessment purposes, reliably predict values for most of the environmental effects endpoints and chemical fate processes identified as being of concern in the NTA. Bioconcentration potential of the phthalate esters can be predicted from studies performed on a number of these compounds with a variety of fish and aquatic invertebrates. These data indicate bioconcentration values of 112 to 856 in fish and 116 to about 4,000 in invertebrates (Refs. 2 through 11).

Furthermore, EPA has sufficient data based on studies completed during Phase I of the NTA and other available data to estimate the water solubility, volatility and aerobic biodegradability of the phthalate esters and to sufficiently predict the acute toxicity of the phthalate esters to fish, invertebrates and algae and their chronic toxicity to aquatic invertebrates.

However, the Agency believes it has insufficient data to predict chronic toxicity of the phthalate esters to fish, and to reliably predict adsorption of these chemicals to sediments. EPA intends that testing be conducted under this Consent Order to fill those data deficiencies. EPA believes that these data will, with the earlier data on the alkyl phthalates and BBP, be sufficient to reliably assess current risks that the dialkyl and alkyl benzyl phthalates may present to the environment. The testing will examine chronic toxicity to fish (through early life stage toxicity testing with rainbow trout) and adsorption of these chemicals to sediments. EPA intends to gather data by having manufacturers test a subset of the 14 alkyl phthalates tested under Phase I of the negotiated testing agreement.

EPA will use the data to determine a quantitative structure-activity relationship (QSAR) that it can apply to untested members of the alkyl phthalate ester chemical class. EPA believes, from available data, that this chemical category is amenable to a QSAR approach. However, if the data developed under this Consent Order indicate such is not the case, then the Agency reserves its right to re-examine the testing needs for this chemical category. Also, the use of QSAR estimation does not mean that estimated values take precedence over valid experimental data, where the two differ. Therefore, should manufacturers of untested or new phthalate ester compounds wish, they could develop experimental data, which EPA would then consider in any risk estimation or regulatory context.

Under the Consent Order, DMP, DnBP, DHP, D711P and DUP will all be tested in the fish early life stage toxicity test in accordance with the schedules and test protocols specified in the Order. These five phthalate esters are characterized by having low, medium, or high numbers of carbons in their alkyl side chains (n = 1 to 11). In a more limited way, these five compounds also cover an array of chemicals having an odd or even number of carbons in the alkyl side chains and having either branched or unbranched side chains. Based on available data, phthalate esters of side chain lengths of more than six carbons may not be toxic at the chemical's limit of water solubility. EPA and the signatory manufacturers have therefore agreed in this Consent Order to double (under the conditions described in the test standard applicable to this Consent Order) the normal length of exposure to the chemical substance in the early life stage toxicity test. Doing so will strengthen any potential conclusion of no toxic response for some or all of the long-chain compounds.

Depending on the results of the testing of these five compounds, additional phthalate esters may be tested. Diethyl phthalate (DEP) may also be tested if its toxicity cannot be reliably estimated from the test data on DMP and DnBP. Furthermore, if D711P produces a toxic reponse, diisononyl phthalate (DINP) may be tested; positive results for DINP may further lead to testing on diisodecyl phthalate (DIDP). If DUP produces a positive result, ditridecyl phthalate (DTDP) may be tested. Testing of these additional compounds (DEP, DINP, DIDP, and DTDP) would be indicated in a follow-up **Federal Register** notice for notification purposes, but is considered part of this Consent Order.

EPA and representatives of the industry signatories will consult in a good faith effort to reach agreement on the interpretation of the data and the necessity of testing these additional compounds. Should EPA and the industry signatories ultimately disagree on the interpretation of the results, then EPA reserves its right to issue a section 4 test rule to obtain the necessary data. The process for review of the results is described in more detail in the Consent Order.

Adsorption isotherm testing in sediments shall be first conducted on DHP, DEHP, DIDP and DTDP (Group I); and if necessary, also on D711P and DINP (Group II). The compounds selected for Group I cover a range with respect to the physical/chemical properties expected to affect the sorptive behavior of phthalates. Testing of this group should provide useful information about the effects of structure and associated properties on adsorption. Compounds from Group I are C–6 to C–13 linear and branched phthalate esters. Their selection will complement the existing adsorption isotherm data on DNBP, DNOP, and DEHP. The inclusion of DEHP in Group I will provide an internal standard for the new set of chemicals to be tested. Testing of these chemicals will also provide a small data set for the development of new, or use of existing structure-activity relationships, to attempt to predict the sorptive behavior of the compounds in Group II. Testing for D711P and DINP, if necessary, would

be indicated in a follow-up notice in the **Federal Register** for notification purposes.

V. Export Notification

The issuance of the Consent Order subjects any person who exports or intends to export DMP, DnBP, DEHP, D711P, DIDP, DTDP and DUP to the export notification requirements of section 12(b) of TSCA. The specific requirements are listed in 40 CFR Part 707. In the June 30, 1986 (51 FR 23706), Interim Rule establishing the Testing Consent Order process, EPA added and reserved Subpart C of Part 799 for listing of chemical substances subject to testing consent orders issued by EPA. This listing serves as notification to persons who export or intend to export chemical substances or mixtures which are the subject of testing consent orders, that 40 CFR Part 707 applies.

VI. Rulemaking Record

EPA has established a record for this rule and the Consent Order (docket number OPTS–42092A). This record contains the basic information considered by the Agency in developing this rule and the testing Consent Order.

This record includes the following information:

A. Supporting Documentation

(1) Testing Consent Order between Aristech, Exxon, Kodak, BASF, and Witco and the Agency.

(2) **Federal Register** notices pertaining to this notice consisting of:

(a) Notice containing the ITC recommendation of alkyl phthalates to the Priority List (October 12, 1977; 42 FR 55026).

(b) Notice containing the ITC recommendation of BBP to the Priority List (November 25, 1980; 45 FR 78432).

(c) Notice containing the Agency's response to the Interagency Testing Committee for the alkyl phthalates and benzyl butyl phthalate (October 30, 1981; 46 FR 53775).

(d) Notice of proposed rulemaking for BBP (September 6, 1985; 50 FR 36446).

(e) Notice of withdrawal of proposed rulemaking for BBP (October 29, 1987; 52 FR 41593).

(f) Notice soliciting interested parties for developing a consent order for the alkyl phthalates (December 24, 1986; 51 FR 46718).

(g) Notice of interim final rule on procedures for developing enforceable consent agreements (51 FR 23706; June 30, 1986).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) Hirzy, J. W., W. J. Adams, W. E. Gledhill, and J. P. Mieure. "Phthalate esters: The environmental issues." Seminar presented to USEPA National Water Quality Laboratory—Duluth. (October 16, 1978).

(2) Karara, A. H. and W. L. Hayton. "Pharmacokinetic model for the uptake and disposition of di-2-ethylhexyl phthalate in sheepshead minnow *Cyprinodon variegatus*." *Aquatic Toxicology* 5:181–195 (1984).

(3) Mehrle, P. M., and F. L. Mayer. "Di-2-ethylhexyl phthalate: residue dynamics and biological effects in rainbow trout and fathead minnows." *In:* "Trace substances in Environmental Health—X. A Symposium", D. D. Hemphill, ed. University of Missouri, Columbia, Missouri. pp. 519–524. (1976).

(4) Macek, K. J., S. R. Petrocelli, and B. H. Sleight III. "Considerations in assessing the potential for, and significance of biomagnification of chemical residues in aquatic food chains." *In:* "Aquatic Toxicology, ASTM STP 667." L. L. Marking and R. A. Kimerle, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 251–268. (1979).

(5) Gledhill, W. E., R. G. Kaley, W. J. Adams, O. Hicks, P. R. Michael, and V. W. Saeger. "An environmental safety assessment of butyl benzyl phthalate." *Environmental Science and Technololgy* 14(3): 301–305 (1980).

(6) Gloss, S. P. and G. R. Biddinger. "Comparison of system design and reproducibility to estimate bioconcentration of di-n-hexylphthalate by *Daphnia magna*. "*In:* "Aquatic Toxicology and Hazard Assessment" Seventh Symposium, ASTM STP 854." R. D. Cardwell, R. Purdy and R. Comotto, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 202–213 (1985).

(7) Brown, D. and R. S. Thompson "Phthalates and the aquatic environment: Part I of the effect of di-2-ethylhexyl phthalate (DEHP) and di-isodecyl phthalate (DIDP) on the reproduction of *Daphnia magna* and observations on their bioconcentration." *Chemosphere* 11(4): 417–426 (1982).

(8) Brown, D. and R. S. Thompson. "Phthalates and the aquatic environment: Part II the bioconcentration and depuration of di-2-ethylhexyl phthalate (DEHP) and di-isodecyl phthalate (DIDP) in mussels (*Mytilus edulis*). *Chemosphere* 11(4): 427–435 (1982).

(9) Streufert, J. M., J. R. Jones, and H. O. Sanders. "Toxicity and biological effects of phthalate esters on midges (*Chironomus plumosus*)." *Transactions of the Missouri Academy of Science* 14: 33–40 (1980).

(10) Perez, K. T., E. W. Davey, N. F. Lackie, G. E. Morrison, P. G. Murphy, A. E. Soper, and D. L. Winslow. "Environmental assessment of a phthalate ester, di-(2-ethylhexyl) phthalate (DEHP), derived from a marine microcosm." *In:* "Aquatic Toxicology and Hazard Assessment: Sixth Symposium, ASTM STP 802." W. E. Bishop, R. D. Cardwell, and B. B. Heidolph, eds. American Society for Testing and Materials, Philadelphia, Pennsylvania. pp. 100–191. (1984).

(11) Brown, D., C. Poels, J. B. Scheubel, and H. Wellens. "An assessment of the occurrence and effects of dialkyl orthophthalates in the environment." ECETOC Technical Report No. 19. L. Turner, ed. European Chemical Industry Ecology and Toxicology Center, Brussels, Belgium. 64 pp. (May 22, 1985).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects in 40 CFR Part 799

Test procedures, Environmental protection, Hazardous substances, Chemicals, Chemical export, Recordkeeping and reporting requirements.

Dated: December 27, 1988.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding the following chemical substances in Chemical Abstract Service (CAS) Registry Number order to the table, to read as follows:

§ 799.5000 Testing consent orders.

* * * * *

CAS Number	Substance or mixture name	Testing	FEDERAL REGISTER citation
.	.	.	.
84-74-2	Di-n-butyl phthalate	Environmental effects	(Insert FR date)

CAS Number	Substance or mixture name	Testing	Federal Register citation
84-75-3	Di-n-hexyl phthalate	Environmental effects	(Insert FR date)
		Chemical fate	(Insert FR date)
*	* * * *	* *	*
117-81-7	Di-2-ethylhexyl phthalate	Chemical fate	(Insert FR date)
119-06-2	Ditridecyl phthalate	Chemical fate	(Insert FR date)
131-11-3	Dimethly phthalate	Environmental effects	(Insert FR date)
*	* * * *	* *	*
3648-20-2	Diundecyl phthalate	Environmental effects	(Insert FR date)
26761-40-0	Diisodecyl phthalate	Chemical fate	(Insert FR date)
68515-42-4	Di (heptyl, nonyl, undecyl phthalate (mixed isomers)	Environmental effects	(Insert FR date)
68515-47-9	Ditridecyl phthalate (mixed isomers)	Chemical fate	(Insert FR date)
68515-49-1	Diisodecyl phthalate (mixed isomers)	Chemical fate	(Insert FR date)
68515-50-4	Dihexyl phthalate (mixed isomers)	Environmental effects	(Insert FR date)
		Chemical fate	(Insert FR date)

[FR Doc. 89-299 Filed 1-6-89; 8:45 am]
BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-190-AD]

Airworthiness Directives; Aerospatiale Model ATR-42 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 Aerospatiale Model ATR-42 series airplanes, which would require a one-time inspection of the Honeywell-Sperry navigation equipment to ensure there is no unauthorized mixing of certain Symbol Generator Units (SGU), or mixing of certain Attitude Heading Reference System (AHRS) components and SGU. In addition, this AD would require replacement of the Air Data Computer (ADC), Autopilot/Flight Director (AP/FD) Computer, SGU, and AHRS. This proposal is prompted by reports of malfunctions of the AHRS, ADC, AP/FD computer, and SGU navigation equipment. This condition, if not corrected, could lead to incorrect attitude and heading information on both pilots' primary displays and, in some cases, no information being displayed.

DATE: Comments must be received no later than February 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. 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. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. 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, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-190-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 series airplanes. There have been numerous reports of malfunctions of the Honeywell-Sperry navigation system due to mixing of system components having various stages of modifications incorporated. This condition, if not corrected, could lead to incorrect attitude and heading information on both pilots' primary displays and, in some cases, no information being displayed.

Aerospatiale has issued Service Bulletin ATR42-34-0027, dated April 6, 1988, which summarizes the modifications required to update the navigation equipment and lists the particular part numbers that cannot be intermixed for Category I or II weather minima landing operations.

Aerospatiale has issued Service Bulletin ATR42-34-0024, Revised 1, dated August 30, 1988, which describes procedures for replacement of the Air Data Computer (ADC).

Aerospatiale has issued Service Bulletin ATR42-34-0025, Revision 1, dated August 30, 1988, which describes procedures for replacement of the Attitude Heading Reference System (AHRS).

Aerospatiale has issued Service Bulletin ATR42-34-0026, Revision 1, dated August 30, 1988, which describes procedures for replacement of the Symbol Generating Units (SGU).

The DGAC has classified all four service bulletins as mandatory, and has issued Airworthiness Directive 88-092-013(B) addressing this subject.

In addition, Aerospatiale has issued Service Bulletin ATR42-22-0009, dated April 6, 1988, which describes procedures for replacement of the Auto Pilot/Flight Director (AP/FD) computer. The DGAC has not classified this service bulletin as mandatory, but the FAA has determined that replacement of the AP/FD computer must be required to ensure that AP/FD computers having software compatible with other system components and maintenance test software are installed in all affected airplanes.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require one-time inspection of the Honeywell-Sperry Navigation equipment to determine if certain combinations of part numbers for SGU and AHRS are installed. If the

inspection reveals there is a mixing of SGU Part Number 7004544–411 and 7004544–412, correction would be required prior to further flight. If the inspection reveals there is a mixing of AHRS Part Number 7003360–934 or Part Number 7003360–934B and SGU Part Number 7004544–412, Category II weather minima landings would no longer be authorized. Certain combinations which are listed in Aerospatiale Service Bulletin ATR42–34–0027, are compatible and do not affect Category II weather minima landings. In addition to the one-time inspection, the proposed rule would require the eventual replacement of the Honeywell-Sperry navigation equipment (AHRS, AP/FD computer, ADC, and SGU), with compatible units having updated software.

It is estimated that 36 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts will be furnished by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $7,200.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, 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 of the minimal cost of compliance per airplane ($200). 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 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:

Aerospatiale: Applies to Model ATR–42 series airplanes, Serial Numbers 003 through 093, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the primary attitude and heading information, accomplish the following:

A. Within 10 days after the effective date of this AD, accomplish the following in accordance with Aerospatiale Service Bulletin ATR42–34–0027, dated April 6, 1988:

1. Inspect Honeywell Sperry Symbol Generator Units (SGU) for unauthorized mixing of units in accordance with paragraph C.(1) of the service bulletin. Correct any unauthorized mixing of units prior to further flight.

2. Inspect Honeywell Sperry navigation equipment for unauthorized mixing of Attitude Heading Reference Units (AHRU) and SGU in accordance with paragraphs C.(2) and C.(3) of the service bulletin. For airplanes with unauthorized mixing of AHRU and SGU prior to further flight, insert the following into the Limitations section 2 of the Airplane Flight Manual (AFM). This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual: "Approach operations are limited to Category I or higher weather minima."

B. Within 120 days after the effective date of this AD, accomplish the following:

1. Replace the Air Data Computer (ADC), in accordance with Aerospatiale Service Bulletin ATR42–34–0024, Revision 1, dated August 30, 1988.

2. Replace the Attitude Heading Reference System (AHRS), in accordance with Aerospatiale Service Bulletin ATR42–34–0025, Revision 1, dated August 30, 1988.

3. Replace the Symbol Generator Units (SGU), in accordance with Aerospatiale Service Bulletin ATR42–34–0026, Revision 1 dated August 30, 1988.

4. Replace the Autopilot/Flight Director (AP/FD) computer, in accordance with Aerospatiale Service bulletin ATR42–22–0009, dated April 6, 1988.

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 Manager, 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 inspections and/or 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9101 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1988.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–321 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 88–CE–38–AD]

Airworthiness Directives; Certain Small Airplanes; Beech et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain small airplanes, which would require the installation of a placard to specify that the airplane is equipped and approved for flight in known icing conditions, or that it is prohibited from such flight. The FAA is aware of numerous accidents which have been attributed to inattention to forecast icing conditions, to an unreasonable delay in exiting an icing environment by the pilot, or by mistakenly assuming the airplane is equipped for flight in known icing conditions. This AD is needed to advise pilots of airplanes unapproved for icing flight not to fly in known icing conditions. Such unapproved operation could result in ice accumulation on the airplane that would cause the airplane to be unable to maintain controlled flight.

DATES: Comments must be received on or before March 10, 1989.

ADDRESSES: Information applicable to this AD may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–CE–38–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Neil B. Christenson, Aircraft Certification Division, FAA, Central Region, ACE–100, 601 East 12th Street, Kansas City, Missouri 64106, (816) 426–6934.

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 triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 88–CE–38–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

As a result of National Safety Board (NTSB) Safety Recommendation No. A–86–97, the Federal Aviation Administration (FAA) has reviewed 516 icing related accidents which occurred during the eleven (11) year period ending in April, 1987. Of these accidents reported by the NTSB, there were 567 fatalities. The following is a summary of the number of icing related accidents and the number of fatalities by manufacturer:

	Accidents	Fatalities
Cessna	206	108
Piper	121	147
Beech	104	201
Mooney	14	23
Mitsubishi	6	18
Grumman Am	10	12
Gulfstream	14	24
Other	41	34
Totals	516	567

These statistics show that icing related accidents have resulted in an average of over 50 people killed each year since 1975.

The above fatalities have occured on many makes and models of airplanes. Certain models, however, have had a much higher accident rate than others. A listing of those models, which were certificated before an icing placard was required, that have contributed to 60% of these fatalities follows:

	Fatal accidents	Fatalities
Beech:		
Model 18 series	10	13
Model 35 series	17	40
Model 50 series	4	17
Model 55 series	3	13
Model 58 series	16	31
Cessna:		
172 series	24	27
182 series	32	35
210 series	27	44
310 series	23	17
Piper:		
PA–23 series	9	20
PA–24 series	14	21
PA–28 series	32	41
Mooney: M20 series	12	22
Totals	223	341

This review has revealed a number of factors that have contributed to unsafe operation in icing conditions:

First, it has been the practice in the past to allow ice protection equipment to be installed on an airplane without substantiation that the equipment will completely protect that portion of the airplane on which it is installed. Under this type of approval, the only substantiation required was that the equipment would not adversely affect the airplane when it was installed and functioning. This type of approval was allowed because it was felt that such equipment provides an additional level of safety for the airplane should inadvertent icing be encountered.

The second factor involves the current practice of airplane manufacturers approving some models for icing flight. This has resulted in airplanes of the same model being delivered, some of which are completely equipped and approved for flight into known icing conditions, while others may be only partially equipped and not approved for flight in known icing conditions. Many of these models, whose certification bases are prior to the requirements of Civil Air Regulation (CAR) 3.772, do not have a placard to advise the pilot of the meterological conditions in which the airplane is authorized or capable of flying. This creates an environment in which a pilot may fly an airplane that is properly equipped and approved to fly in known icing conditions, while at some time later he may have occasion to fly the same model that is only partially equipped (e.g., wing and horizontal stabilizer boots only). The pilot may assume that the second airplane is also approved to fly in known icing conditions since there is no placard installed to tell him otherwise, and a hazardous icing encounter could result.

Neither the earlier type certification rules to which these airplanes were certified nor the operating rules with which all airplanes have to comply require the installation of a placard which informs the pilot that the airplane is approved for flight in icing conditions, or that it is prohibited from such flight. The installation of such a placard was not made a certification rule until Amendment 3–7 to CAR 3, which added paragraph 3.772 to CAR 3 in 1962. This rule required that "A placard shall be provided in clear view of the pilot which specifies the type of operations (e.g., VFR, IFR, day or night) and the meteorological conditions (e.g., icing conditions) to which the operation of the airplane is limited by the equipment installed." Airplanes certificated prior to the adoption of Amendment 3–7, but still being manufactured, are not required to have this placard installed. It is estimated that approximately 50% of the airplanes involved in icing related accidents do not contain such a placard. There is obviously no guarantee that the installation of a placard will, in all cases, prevent icing accidents from happening. However, the FAA has concluded that this corrective action is needed to prohibit certain airplanes from flight in known icing conditions, except those equipped with approved icing equipment and approved for icing flight. Since the condition described

herein exists on these certain airplanes whose certification bases are prior to the 1962 adoption of paragraph 3.772, the FAA is proposing an AD which would require placards that specifically identify whether these airplanes are, or are not, approved for flight in known icing conditions and thereby reduce the possibility of icing related accidents.

This AD will effect those airplanes whose adverse service histories appear to make them most susceptible to icing encounter accidents. The FAA is continuing to evaluate the service history of the remaining pre-CAR 3.772 airplanes. This evaluation may reveal the need for subsequent AD's to improve the airworthiness of these airplanes.

The FAA has determined there are approximately 113,700 airplanes affected by the proposed AD. The cost of placarding the airplanes as specified in the proposed AD is estimated to be $50 per airplane. The total cost is estimated to be $5,685,000 to the private sector. Few, if any, small entities are expected to own a sufficient number of airplanes for this cost to exceed the threshold for Regulatory Flexibility Action.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation, safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Applicability: Applies to certain small airplanes that were certificated prior to the adoption of Amendment 3-7 to CAR 3, dated March 27, 1962, and are limited to those in the attached Applicability List:

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished. To assure that the pilot has the correct icing condition operational information, accomplish the following:

(a) Check the cockpit area for a placard which either specifies that the airplane is approved for flight in known icing conditions or that it is prohibited from flight in known icing conditions.

Note—A placard stating "KNOWN ICING CONDITIONS TO BE AVOIDED" is not adequate to meet the requirements of this AD.

(1) If a placard is found which authorizes flight in known icing conditions, inspect the airplane to verify that the required approved icing equipment is installed as designated in the airplane records, and that the placard installed properly identifies the airplane's approval for flight in icing conditions.

(2) If a placard is found that prohibits the airplane from flight in known icing conditions, accomplish paragraph (b) of this AD.

(3) If no placard is found, accomplish a review of the airplane records to determine if it is approved for flight in icing conditions. If this review shows that the airplane is not approved for icing flight, fabricate and install on the instrument panel in clear view of the pilot a placard with letters of minimum 0.2 inches in height which reads as follows:

"THIS AIRPLANE PROHIBITED FROM FLIGHT IN KNOWN ICING CONDITIONS (VISIBLE MOISTURE AND TEMPERATURE OF +5 °C or Less)." and operate the airplane accordingly. File a copy of this AD in the Pilot's Operating Handbook (POH) or Airplane Flight Manual (AFM) Limitations Section if either exists.

(4) If the review accomplished per paragraph (a)(1) of this AD shows that the airplane is approved for icing flight, determine that the equipment required by this approval is installed in accordance with that approval and is functional. These airplanes may be approved for flight in known icing conditions, in known light icing conditions, or in known moderate icing conditions as specified in the approval. For these airplanes, fabricate and install on the instrument panel in clear view of the pilot, an appropriate placard with letters of minimum 0.2 inches in height which reads as follows:

(A) "THIS AIRPLANE APPROVED FOR FLIGHT IN [KNOWN, KNOWN LIGHT, OR KNOWN MODERATE] ICING CONDITIONS (VISIBLE MOISTURE AND A TEMPERATURE OF +5 °C OR LESS) WHEN THE LISTED APPROVED EQUIPMENT IS INSTALLED AND FUNCTIONING."or:

(B) "THIS AIRPLANE APROVED FOR FLIGHT IN [KNOWN, KNOWN LIGHT, OR KNOWN MOERATE] ICING CONDITIONS (VISIBLE MOISTURE AND A TEMPERATURE OF +5 °C OR LESS) WHEN ICING EQUIPMENT IS INSTALLED IN ACCORDANCE WITH STC AND FUNCTIONING."

(b) Following the determination that a proper icing operation placard is installed in accordance with this AD, or that a placard has been fabricated an installed in accordance with this AD, file a copy of this AD in the POH or AFM Limitations Section, if such document exists.

(c) The requirements of paragraphs (a) and (b) of this AD must be accomplished by the holder of a mechanic or repairman certificate issued under Part 65 of the FAR.

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

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, ACE-100, 601 East 12th Street, Kansas City, Missouri 64106.

All persons affected by this directive may examine the documents referred to herein at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 20, 1988.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

APPLICABILITY LIST

Manufacturer	Affected Airplanes
Beech	Models 18D, H18, A18A, A18D, C18S, D18C, D18S, E18S-9700, G18S, SA18D, S18D (All Serial Numbers (S/N)).
	Models 35, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35R, 35A-33, 35B-33, 35C-33, 35A-33A (All S/N).
	Models 50, B50, C50, D50, E50, F50, G50, H50, J50, D50A, D50B, D50C, D50E, D50E-5990 (All S/N).
	Models D55, D55A, E55, E55A, 95-B55, 95-C55 (All S/N) ADModels 58, 58A (All S/N).
Cessna	172 Series through 172K (All S/N), 172L (S/N 17259224 through 17260758).
	Models P172D, R172E, R172F R172G, R172H, 172RG (All S/N).

APPLICABILITY LIST—Continued

Manufacturer	Affected Airplanes
	182 Series through 182N (All S/N), 182P (S/N 18260826 through 18264295).
	210 Series through T210K (All S/N), 210L/T210L (S/N 21059503 through 21061039).
	310 Series through 310Q/T310Q (All S/N), 310R/T310R (S/N 310R0001 through 310R0801).
Mooney	M20 Series (All S/N).
Piper	PA-23, PA-23-160, PA-23-235, PA-23-250, PA-E23-250 (All S/N).
	PA-24, PA-24-250, PA-24-260, PA-24-400 (All S/N).
	PA-28-140, PA-28-150, PA-28-151, PA-28-160, PA-28-161, PA-28-180, PA-28-181, PA-28-201T, PA-28-235, PA-28-23G, PA-28R-180, PA-28R-200, PA-28R-201, PA-28R-201T, PA-28RT-201, PA-28RT-201T (All S/N).

[FR Doc. 89-322 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AGL-26]

Proposed Macomb, IL, Transition Area Alteration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Macomb, IL, transition area to accommodate a new NDB RWY 26 and LOC RWY 26 Standard Instrument Approach Procedures (SIAPs) to Macomb Municipal Airport, Macomb, IL. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions in controlled airspace.

DATES: Comments must be received on or before February 9, 1989.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 88-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provided the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Macomb, IL.

The present transition area is being modified to accommodate new NDB RWY 26 and LOC RWY 26 SIAPs. The only modification to the existing airspace is in the transition area extension. The extension will consist of an additional 4.5 miles to the east and an additional 1.5-mile width each side of the 090° bearing from Macomb Municipal Airport.

The development of these procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for the procedures 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.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

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.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Macomb, IL [Revised]

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Macomb Municipal Airport (lat. 40°31'11" N., long. 90° 39'17" W.); and within 4.5 miles each side of the 090° bearing from Macomb Municipal Airport extending from the 6-mile radius area to 12.5 miles east of the airport.

Issued in Des Plaines, Illinois, on December 21, 1988.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 89-285 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-111-86]

Income Tax; Taxable Years Beginning After December 31, 1986; Changes With Respect to Prizes and Awards and Employee Achievement Awards

AGENCY: Internal Revenue Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the excludability of certain prizes and awards and to the deductibility of certain employee awards. Changes to the applicable tax law were made by the Tax Reform Act of 1986. These amendments, if adopted, will provide the public with the guidance needed to comply with the Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 10, 1989. The amendments are proposed to be effective after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: CC:CORP:T:R, IA-111-86.

FOR FURTHER INFORMATION CONTACT: Johnnel St. Germain of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; Attention: CC:CORP:T:R, IA-111-86. Telephone 202-566-4509 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Internal Revenue Service. Copies of comments should also be sent to the Internal Revenue Service at the address previously specified.

The collections of information in this regulation are in 26 CFR 1.74-1(c). This information is required by the Internal Revenue Service in order to verify that the proper amount of income is reported by taxpayers on their returns of tax. The likely respondents are individuals.

Estimated total annual reporting burden: 1,275 hours.

Estimated average annual burden per respondent: 15 minutes.

Estimated number of respondents: 5,100.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 74, 102, and 274 of the Internal Revenue Code (Code). The amendments are proposed to conform the regulations to section 122 of the Tax Reform Act of 1986 (Pub. L. 99-514). The proposed amendments, if adopted, will be issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

General Information

Prior to the 1986 Code, section 74 stated that prizes and awards, other than certain types of fellowship grants and scholarships, were includible in gross income unless they were made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement. To qualify for the exclusion, the recipient must have been selected without any action on his part and could not be required to render substantial services as a condition to receiving the prize or award.

Within the context of a business relationship, prizes and awards that would otherwise be includible in a recipient's gross income were excludable if they qualified as gifts under section 102. In general, section 274(b) disallowed an employer a business deduction for gifts to an employee to the extent that the total cost of all gifts of cash, tangible personal property, and other items to the same individual during the taxable year exceeded $25. A special exception to the $25 limitation was allowed for items of tangible personal property awarded to an employee for length of service, safety achievement, or productivity. The employer could deduct the cost of such an award up to $400. If the item was provided under a qualified award plan, the deductibility limitation was increased to $1600, provided the average cost of all plan awards made during the year did not exceed $400. A de minimis fringe benefit under section 132(e) was, and continues to be, excludable from gross income and is not subject to the requirements imposed upon prizes and awards under sections 74 and 274.

Explanation of Provisions

These proposed amendments relate to the excludability of certain prizes and awards and to the deductibility of certain employee awards and reflect the substantial changes made by the Tax Reform Act of 1986 (the Act) to sections 74, 102 and 274 of the Internal Revenue Code (Code). Changes to the applicable sections of the Code and regulations, amended or newly incorporated by this document, are effective for awards made after December 31, 1986.

Under the Act, the section 74(b) exclusion for prizes or awards received in recognition of charitable achievement is available only if the payor transfers the prize or award to one or more entities described in paragraph (1) and/or (2) of section 170(c), pursuant to the direction of the recipient.

Section 1.74-1(c) of the proposed regulations requires that recipients of prizes and awards clearly designate, in writing, within 45 days of the date the item is granted that they wish to have the prize or award transferred to one or more qualifying donee organizations. The proposed regulations set forth requirements which, in certain instances, determine whether a qualifying designation has been made.

Section 1.74-1(d) of the proposed regulations clarifies that the exclusion under section 74(b) will not be available unless the prize or award is transferred

by the payor to one or more qualified donee organizations before the recipient, or any person other than the grantor or a qualified donee organization, uses the item. In general, a transfer may be accomplished by any method that results in receipt of the prize or award by, or on behalf of, one or more qualified donee organizations.

Section 1.74–1(e) further clarifies the requirements of section 74(b) by defining certain terms. Definitions are included which determine what constitutes a "qualified donee organization," when a "disqualifying use" has taken place, and when an item is considered "granted."

Section 1.74–1(f) provides that neither the payor nor the recipient of the prize or award may claim a charitable contribution deduction for the value of any prize or award for which an exclusion is allowed under section 74(b).

All of the requirements of section 74(b) in existence prior to passage of the Act remain in effect and must be met in order for the award recipient to be eligible for the exclusion. Accordingly, rules and regulations governing these additional requirements, to the extent they are not inconsistent with the proposed regulations, will remain in effect.

New Code section 74(c) excludes certain employee achievement awards from gross income. The exclusion applies, subject to certain limitations, to the value of awards made by the employer for safety achievement or length of service achievement. The amount of the exclusion generally corresponds with the deduction given the employer under new section 274(j) for these "employee achievement awards." Thus, in general, the employee must include these awards in income to the extent that the fair market value of the award, or, if greater, the cost of the award to the employer, exceeds the amount deductible under section 274(j). The exclusion allows an employee to exclude the full fair market value of the award where the cost of the award is fully deductible by the employer.

Section 1.74–2(d) of the proposed regulations provides special rules for employee achievement awards applicable to sole-proprietors and tax-exempt employers.

Section 1.74–2(e) clarifies that an employee award, whether or not an employee achievement award, may be excludible from gross income as a de minimis fringe benefit under section 132(e).

Section 102(c) of the Code clarifies that, with the exception of employee achievement awards under section 74(c) and de minimis fringe benefits under section 132(e), an employee shall not exclude from gross income any amount transferred to the employee (or for the employee's benefit) by, or on behalf of, the employer in the form of a gift, bequest, devise, or inheritance. Therefore, while awards satisfying the requirements of section 74(c) and de minimis fringe benefits qualifying under section 132(e) will be excluded from gross income under those sections, no amounts (except in certain narrowly defined circumstances) transferred by, or on behalf of, an individual's employer will be excludable from gross income under section 102.

Section 1.102–1(f)(2) of the proposed regulations provides that for purposes of section 102(c), extraordinary transfers to the natural objects of one's bounty will not be considered transfers for the benefit of an employee if it can be shown that the transfer was not made in recognition of the transferee's employment. Thus, the rules set out in *Comm.* v. *Duberstein*, 363 U.S. 278 (1960), formerly applicable in the determination of whether all property transferred inter-vivos from an employer to an employee constitutes a gift, will only be applicable where the transferee employee would be the natural object of the employer's bounty.

From an employer's perspective, the Act substantially modifies an employer's ability to deduct the cost of certain employee awards. New section 274(j) defines deductible "employee achievement awards" to include only those awards made for length of service or safety achievement. In addition, an employee achievement award must be an item of tangible personal property awarded as part of a meaningful presentation and made under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation.

Section 274(j) also establishes a limit on the amount that may be deducted by an employer. The annual deduction limitation per employee is $400 for employee achievement awards that are not awarded as part of a qualified award plan. The annual deduction limitation per employee is $1,600 for employee achievement awards that are awarded as part of a qualified award plan. In no event may an employer deduct more than $1,600 per employee for all employee achievement awards made during the year. An award is not a qualified plan award where the average cost of all employee achievement awards made by the employer pursuant to a plan exceeds $400 during the taxable year.

Section 1.274–8(b) of the proposed regulations clarifies that the $1,600 deduction limitation applies in the aggregate, so that the $1,600 limitation for qualified plan awards and the $400 limitation for employee achievement awards that are not qualified plan awards cannot be added together to allow deductions exceeding $1,600 for employee achievement awards made to an employee in a taxable year.

Section 1.274–8(c)(2) of the proposed regulations provides that tangible personal property does not include cash or any gift certificate other than a nonnegotiable gift certificate conferring only the right to receive tangible personal property. The proposed regulations also give examples of what will be considered to create a significant likelihood of the payment of disguised compensation. For example, the providing of employee achievement awards in a manner that discriminates in favor of highly paid employees will be considered to be a payment of disguised compensation.

Section 1.274–8(c)(5) of the proposed regulations defines a "qualified plan award" as an employee achievement award presented pursuant to an established written award plan or program of the employer that does not discriminate as to eligibility or benefits.

Section 1.274–8(d)(1) of the proposed regulations states that the deduction limitations shall apply to a partnership as well as to each member of the partnership. Paragraph (d)(2) provides that the cost of length of service achievement awards (other than awards excludable under section 132(e)) may only be deducted by the employer if the employee has at least 5 years of service with the employer and has not received a length of service achievement award during that year or any of the 4 prior years. In addition, this paragraph clarifies that although a retirement award will be treated as having been provided for length of service achievement, it may also qualify for treatment as a de minimis fringe benefit under section 132(e) of the Code. Paragraph (d)(3) provides guidance with respect to safety achievement awards. An employer may deduct the cost of safety achievement awards only when presented to no more than 10 percent of an employer's eligible employees. Eligible employees include any employee who has worked for the employer in full time capacity for at least one year and who is not a manager, administrator, clerical employee, or other professional employee. Special rules clarify that in the case where more than 10 percent of an employer's eligible employees receive a safety achievement award, no award will be considered to be awarded

for safety achievement if it cannot be determined that the award was presented before the 10 percent limitation was exceeded.

The Act specifically excludes awards qualifying as de minimis fringe benefits under section 132(e) from the requirements for length of service achievement and safety achievement. As a result, employers are not required to consider section 132(e) awards in determining whether employee achievement awards comply with the 5 year limitations for length of service achievement and the 10 percent eligible employee limitations for safety achievement.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Comments And Requests For a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Christopher J. Wilson, formerly of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.61–1 Through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to The Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§ 1.74–1 [Amended]

Par. 2. Section 1.74–1 is amended as follows:

(a) Paragraph (a)(1) is amended by—

(1) Removing the phrase "subsection (b)" and adding the phrase "subsections (b) and (c)" in its place, and

(2) Removing the word "any" in the last sentence and adding the word "most" in its place.

(b) Paragraph (b) is amended by—

(1) Removing the word "and" from the first sentence, and

(2) Removing "award." at the end of the first sentence and adding the language set forth below in its place.

(c) Paragraph (c) is removed and new paragraphs (c), (d), (e), (f), and (g) are added directly following paragraph (b) to read as set forth below.

§ 1.74–1 Prizes and Awards.

* * * * *

(b) *Exclusion from gross income* * * * award; and (4) the payor transfers the prize or award (and the prize or award is, in fact, transferred) to one or more governmental units or organizations described in paragraph (1) or (2) of section 170(c) pursuant to a designation by the recipient. Accordingly, awards such as the Nobel prize and the Pulitzer prize will qualify for the exclusion if the award is transferred by the payor to one or more qualifying organizations pursuant to a qualified designation by the recipient.

(c) *Designation by recipient.*—(1) *In general.* To qualify for the exclusion under this section, the recipient must make a qualifying designation, in writing, within 45 days of the date the prize or award is granted (see paragraph (e)(3) of this section for a definition of "granted"). A qualifying designation is required to indicate only that a designation is being made. The document does not need to state on its face that the organization(s) are entities described in paragraph (1) and/or (2) of section 170(c) to result in a qualified designation. Furthermore, it is not necessary that the document do more than identify a class of entities from which the payor may select a recipient. However, designation of a specific nonqualified donee organization or designation of a class of recipients that may include nonqualified donee organizations is not a qualified designation. The following example illustrates the application of this section:

A distinguished ophthamologist, S, is awarded the Nobel prize for medicine. S may designate that the prize money be given to a particular university that is described in section 170(c)(1), or to any university that is described in that section. However, S cannot designate that the award be given to a donee that is not described in section 170(c)(1), such as a foreign medical school. Selection of such a donee or inclusion of such a donee on a list of possible donees on S's designation would disqualify the designation.

(2) *Prizes and awards granted before 60 days after date of publication of final regulations.* In the case of prizes and awards granted before 60 days after the date of publication of final regulations, a qualifying designation may be made at any time prior to 105 days after date of publication of final regulations.

(d) *Transferred by payor.* An exclusion will not be available under this section unless the designated items or amounts are transferred by the payor to one or more qualified donee organizations. The provisions of this paragraph shall not be satisfied unless the items or amounts are transferred by the payor to one or more qualifying donee organizations no later than the due date of the return (without regard to extensions) for the taxable year in which the items or amounts would otherwise be includible in the recipient's gross income. A transfer may be accomplished by any method that results in the receipt of the items or amounts by one or more qualified donee organizations from the payor and does not involve a disqualifying use of the items or amounts. Delivery of items or amounts by a person associated with a payor (*e.g.*, a contractual agent, licensee, or other representative of the payor) will satisfy the requirements of this section so long as the items or amounts are received by, or on behalf of, one or more qualified donee organizations. Possession of a prize or award by any person before a designation is made will not result in the disallowance of an exclusion unless a disqualifying use of the items or amounts is made before the items or amounts are returned to the payor for transfer to one or more qualified donee organizations (see paragraph (e)(2) of this section for a definition of "disqualifying use"). Accordingly, transfer of an item or amount to a nonqualified donee organization will not result in an ineffective transfer under this section if the item or amount is timely returned to

the payor by the nonqualified donee organization before a disqualifying use of the item or amount is made and the item or amount is then transferred to a qualifying organization.

(e) *Definitions.*—(1) For purposes of this section, "qualified donee organizations" means entities defined in section 170(c) (1) or (2) of the Code.

(2) For purposes of this section, the term "disqualifying use" means, in the case of cash or other intangibles, spending, depositing, investing or otherwise using the prize or award so as to enure to the benefit of the recipient or any person other than the grantor or an entity described in section 170(c) (1) or (2). In the case of tangible items, the term "disqualifying use" means physical possession of the item for more than a brief period of time by any person other than the grantor or an entity described in section 170(c) (1) or (2). Thus, physical possession by the recipient or a person associated with the recipient may constitute a disqualifying use if the item is kept for more than a brief period of time. For example, receipt of an unexpected tangible award at a ceremony that otherwise comports with the requirements of this section will not constitute a disqualifying use unless the recipient fails to return the item to the payor as soon as practicable after receipt.

(3) For purposes of this section, an item will be considered "granted" when it is subject to the recipient's dominion and control to such an extent that it otherwise would be includible in the recipient's gross income.

(f) *Charitable deduction not allowable.* Neither the payor nor the recipient will be allowed a charitable deduction for the value of any prize or award that is excluded under this section.

(g) *Qualified scholarships.* See section 117 and the regulations thereunder for provisions relating to qualified scholarships.

Par. 3. New § 1.74–2 is added to immediately follow § 1.74–1 as set forth below.

§ 1.74–2 Special exclusion for certain employee achievement awards.

(a) *General rule*—(1) Section 74(c) provides an exclusion from gross income for the value of an employee achievement award (as defined in section 274(j)) received by an employee if the cost to the employer of the award does not exceed the amount allowable as a deduction to the employer for the cost of the award. Thus, where the cost to the employer of an employee achievement award is fully deductible after considering the limitation under section 274(j), the value representing the employer's cost of the award is excludable from the employee's gross income.

(2) Where the cost of an award to the employer is so disproportionate to the fair market value of the award that there is a significant likelihood that the award was given as disguised compensation, no portion of the award will qualify as an employee achievement award excludable under the provisions of this section (see also § 1.274–8(c) (1) and (4)).

(b) *Excess deduction award.* Where the cost to the employer of an employee achievement award exceeds the amount allowable as a deduction to the employer, the recipient must include in gross income an amount which is the greater of (1) the excess of such cost over the amount that is allowable as a deduction (but not to exceed the fair market value of the award) or (2) the excess of the fair market value of the award over the amount allowable as a deduction to the employer.

(c) *Examples.* The operation of this section may be illustrated by the following examples:

Example (1). An employer makes a qualifying length of service award to an employee in the form of a television set. Assume that the deduction limitation under section 274(j)(2) applicable to the award is $400. Assume also that the cost of the television set to the employer was $350, and that the fair market value of the television set is $475. The amount excludable is $475 (the full fair market value of the television set). This is true even though the fair market value exceeds both the cost of the television set to the employer and the $400 deduction allowable to the employer for non-qualified plan awards under section 274(j)(2)(A).

Example (2). Assume the same facts as in example (1) except that the fair market value of the television set is $900. Under these circumstances, the fair market value of the television set is so disproportionate to the cost of the item to the employer that the item will be considered payment of disguised compensation. As a result, no portion of the award will qualify as an employee achievement award. Since no portion of the award is excludable by the employee, the employer must report the full fair market value of the award as compensation on the employee's Form W–2.

Example (3). An employer makes a qualifying safety achievement award to an employee in the form of a pearl necklace. Assume that the deduction limitation under section 274(j) is $400. Assume also that the cost of the necklace to the employer is $425 and that the fair market value of the necklace is $475. The amount includible by the employee in gross income is the greater of (a) $25 (the difference between the cost of the item ($425) and the employer's deductible amount of $400) or (b) $75 (the amount by which the fair market value of the award ($475) exceeds the employer's deductible amount of $400). Accordingly, $75 is the amount includible in the employee's gross income. The remaining portion of the fair market value of the award (*i.e.*, the $400 amount allowable as a deduction to the employer) is not included in the gross income of the employee. If the cost of the pearl necklace to the employer was $500 instead of $425, then $100 would be includible in the employee's gross income because the excess of the cost of the award over $400 (*i.e.*, $100) is greater than the excess of the fair market value of the award over $400 (*i.e.*, $75). The employer must report the $75, which is includible in the employee's gross income, as compensation on the employee's Form W–2.

Example (4). An employer invites its employees to attend a party it is sponsoring to benefit a charity. In order to encourage the employees to attend the party and to make contributions to the charity, the employer promises to match the employees' contributions and also provides expensive prizes to be awarded to contributing employees selected at random. Each employee receiving a prize must include the full fair market value of the prize in gross income because the prizes are not qualifying achievement awards under section 274(j) or de minimis fringe benefits under section 132(e). Since the prizes are not excludable, the employer must report the full fair market value of the prize as compensation on the employee's Form W–2.

(d) *Special rules*—(1) The exclusion provided by this section shall not be available for any award made by a sole proprietorship to the sole proprietor.

(2) In the case of an employer exempt from taxation under Subtitle A of the Code, any reference in this section to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under Subtitle A of the Code.

(e) *Exclusion for certain de minimis fringe benefits.* Nothing contained in this section shall preclude the exclusion of the value of an employee award that is otherwise qualified for exclusion under section 132(e).

Par. 4. Section 1.102–1 is amended as follows:

(a) The last sentence of paragraph (a) is removed.

(b) A new paragraph (f) is added immediately following paragraph (e) to read as follows.

§ 1.102–1 Gifts and inheritances.

* * * * *

(f) *Exclusions*—(1) *In general.* Section 102 does not apply to prizes and awards (including employee achievement awards) (see section 74); certain de minimis fringe benefits (see section 132); any amount transferred by or for an employer to, or for the benefit of, an

employee (see section 102(c)); or to qualified scholarships (see section 117).

(2) *Employer/Employee transfers.* For purposes of section 102(c), extraordinary transfers to the natural objects of an employer's bounty will not be considered transfers to, or for the benefit of, an employee if the employee can show that the transfer was not made in recognition of the employee's employment. Accordingly, section 102(c) shall not apply to amounts transferred between related parties (*e.g.*, father and son) if the purpose of the transfer can be substantially attributed to the familial relationship of the parties and not to the circumstances of their employment.

§ 1.274-1 [Amended]

Par. 5. Section 1.274-1 is amended by removing everything after the word "business" in the last sentence of paragraph (d) and adding in its place "activity, see § 1.274-6,"; revising paragraph (e) and adding paragraph (f) to read as follows:

* * * (e) treatment of personal portion of entertainment facility, see § 1.274-7, and (f) employee achievement awards, see § 1.274-8.

§ 1.274-3 [Amended]

Par. 6. Section 1.274-3 is amended as follows:

(a) The last sentence of paragraph (b)(1) is amended by substituting "subsections (b) and (c) of section 74" for "section 74(b)".

(b) The language "recipient, or" at the end of paragraph (b)(2)(ii) is replaced by the language "recipient."

(c) Subdivisions (iii) and (iv) of paragraph (b)(2) are removed.

(d) The first, second, and fourth sentences of the flush material immediately following subdivision (iv) are removed and the last sentence is amended by substituting "sections 61, 74, 102, and 132" for "sections 61, 74, and 102".

(e) Paragraph (d) is removed and paragraphs (e), (f), and (g) are redesignated as paragraphs (d), (e), and (f).

§ 1.274-8 [Redesignated as § 1.274-9]

Par. 7. Section 1.274-8 is redesignated as § 1.274-9 and a new § 1.274-8 is added immediately following § 1.274-7 to read as set forth below.

§ 1.274-8 Disallowance of certain employee achievement award expenses.

(a) *In general.* No deduction is allowable under section 162 or 212 for any portion of the cost of an employee achievement award (as defined in section 274(j)(3)(A)) in excess of the deduction limitations of section 274(j)(2).

(b) *Deduction limitations.* The deduction for the cost of an employee achievement award made by an employer to an employee: (1) Which is not a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year which are not qualified plan awards, shall not exceed $400, and (2) which is a qualified plan award, when added to the cost to the employer for all other employee achievement awards made to such employee during the taxable year (including employee achievement awards which are not qualified plan awards), shall not exceed $1,600. Thus, the $1,600 limitation is the maximum amount that may be deducted by an employer for all employee achievement awards granted to any one employee during the taxable year.

(c) *Definitions*—(1) *Employee achievement award.* The term "employee achievement award", for purposes of this section, means an item of tangible personal property that is transferred to an employee by reason of the employee's length of service or safety achievement. The item must be awarded as part of a meaningful presentation, and under conditions and circumstances that do not create a significant likelihood of the payment of disguised compensation. For purposes of section 274(j), an award made by a sole proprietorship to the sole proprietor is not an award made to an employee.

(2) *Tangible personal property.* For purposes of this section, the term "tangible personal property" does not include cash or a certificate (other than a nonnegotiable certificate conferring only the right to receive tangible personal property). If a certificate entitles an employee to receive a reduction of the balance due on his account with the issuer of the certificate, the certificate is a negotiable certificate and is not tangible personal property for purposes of this section. Other items that will not be considered to be items of tangible personal property include vacations, meals, lodging, tickets to theater and sporting events, and stocks, bonds, and other securities.

(3) *Meaningful presentation.* Whether an award is presented as part of a meaningful presentation is determined by a facts and circumstances test. While the presentation need not be elaborate, it must be a ceremonious observance emphasizing the recipient's achievement in the area of safety or length of service.

(4) *Disguised compensation.* An award will be considered disguised compensation if the conditions and circumstances surrounding the award create a significant likelihood that it is payment of compensation. Examples include the making of employee achievement awards at the time of annual salary adjustments or as a substitute for a prior program of awarding cash bonuses, the providing of employee achievement awards in a manner that discriminates in favor of highly paid employees, or, with respect to awards the cost of which would otherwise be fully deductible by the employer under the deduction limitations of section 274(j)(2), the making of an employee achievement award the cost of which to the employer is grossly disproportionate to the fair market value of the item.

(5) *Qualified plan awards*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, the term "qualified plan award" means an employee achievement award that is presented pursuant to an established written plan or program that does not discriminate in terms of eligibility or benefits in favor of highly compensated employees. See section 414(g) of the Code for the definition of highly compensated employees. Whether an award plan is established shall be determined from all the facts and circumstances of the particular case, including the frequency and timing of any changes to the plan. Whether or not an award plan is discriminatory shall be determined from all the facts and circumstances of the particular case. An award plan may fail to qualify because it is discriminatory in its actual operation even though the written provisions of the award plan are nondiscriminatory.

(ii) *Items not treated as qualified plan awards.* No award presented by an employer during the taxable year will be considered a qualified plan award if the average cost of all employee achievement awards presented during the taxable year by the taxpayer under any plan described in paragraph (c)(5)(i) of this section exceeds $400. The average cost of employee achievement awards shall be computed by dividing (A) the sum of the costs to the employer for all employee achievement awards (without regard to the deductibility of those costs) by (B) the total number of employee achievement awards presented. For purposes of the preceding sentence, employee achievement awards of nominal value shall not be taken into account in the computation of average cost. An employee achievement award that costs the employer $50 or less shall be considered to be an employee achievement award of nominal value.

(d) *Special rules*—(1) *Partnerships.* Where employee achievement awards are made by a partnership, the deduction limitations of section 274(j)(2) shall apply to the partnership as well as to each member thereof.

(2) *Length of service awards.*—An item shall not be treated as having been provided for length of service achievement if the item is presented for less than 5 years employment with the taxpayer or if the award recipient received a length of service achievement award (other than an award excludable under section 132(e)(1)) during that year or any of the prior 4 calendar years. An award presented upon the occasion of a recipient's retirement is a length of service award subject to the rules of this section. However, under appropriate circumstances, a traditional retirement award will be treated as a de minimis fringe. For example, assume that an employer provides a gold watch to each employee who completes 25 years of service with the employer. The value of the gold watch is excluded from gross income as a de minimis fringe. However, if the employer provides a gold watch to an employee who has not completed lengthy service with the employer or on an occasion other than retirment, the value of the watch is not excludable from gross income under section 132(e).

(3) *Safety achievement awards*—(i) *In general.* An item shall not be treated as having been provided for safety achievement if—

(A) During the taxable year, employee achievement awards (other than awards excludable under section 132 (e)(1)) for safety achievement have previously been awarded by the taxpayer to more than 10 percent of the eligible employees of the taxpayer, or

(B) Such item is awarded to a manager, administrator, clerical employee, or other professional employee.

(ii) *"Eligible employee" defined.* An eligible employee is one not described in paragraph (d)(3)(i)(B) of this section and who has worked in a full-time capacity for the taxpayer for a minimum of one year immediately preceding the date on which the safety achievement award is presented.

(iii) *Special rules.* Where safety achievement awards are presented to more than 10 percent of the taxpayer's eligible employees, only those awards presented to eligible employees before 10 percent of the taxpayer's eligible employees are exceeded shall be treated as having been provided for safety achievement. Where the only safety achievement awards presented by an employer consist of items that are presented at one time during the calendar year, then, if safety achievement awards are presented to more than 10 percent of the taxpayer's eligible employees, the taxpayer may deduct an amount equal to the product of the cost of the item (subject to the applicable deduction limitation) and 10 percent of the taxpayer's eligible employees. Except as provided in the preceding sentence, no award shall be treated as having been provided for safety achievement except to the extent that it can be reasonably demonstrated that that award was made before the 10 percent limitation was exceeded.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-368 Filed 1-6-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Montana permanent regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to definitions, permitting, backfilling and grading, hydrology, soils, alluvial valley floors, alternate reclamation, remining, underground mining, prospecting, bonding, areas where mining is prohibited, and inspection and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, incorporate the additional flexibility afforded by the revised Federal regulations, provide additional safeguards, clarify ambiguities, improve operational efficiency, and achieve use of the best technology currently available.

This notice sets forth the times and locations that the Montana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.s.t. February 8, 1989. If requested, a public hearing on the proposed amendment will be held on February 3, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t. on January 24, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jerry R. Ennis at the address listed below.

Copies of the Montana 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 one free copy of the proposed amendment by contacting OSMRE's Casper Field Office.

Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 265-5776.

Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 11th Avenue, Helena, MT 59620, Telephone: (406) 444-2074.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street NW., Washington, DC 20240, Telephone: (202) 343-5492.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, at the address or telephone number listed in **"ADDRESSES."**

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Montana program can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15 and 926.16.

II. Proposed Amendment

By letter dated December 21, 1988, (administrative record No. MT-5-1), Montana submitted a proposed amendment to its program pursuant to SMCRA. Montana submitted the proposed amendment in response to a July 2, 1985 letter that OSMRE sent in accordance with 30 CFR 732.17(c). The

regulations that Montana proposes to amend are: Definitions and strip mine permit application requirements, Administrative Rules of Montana (ARM) 26.4 Sub-Chapter 3; mine permit and test pit prospecting permit procedures, ARM 26.4 Sub-Chpater 4; backfilling and grading requirements, ARM 26.4 Sub-Chapter 5; transportation facilities, use explosives, and hydrology, ARM 26.4 Sub-Chapter 6; topsoiling, revegetation, and protection of wildlife and air resources, ARM 26.4 Sub-Chapter 7; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 Sub-Chapter 8; underground coal and uranium mining, ARM 26.4 Sub-Chapter 9; prospecting, ARM 26.4 Sub-Chapter 10; bonding, insurance, reporting, and special areas, ARM 26.4 Sub-Chapter 11; special departmental procedures, ARM 26.4 Sub-Chapter 12; and miscellaneous provisions, ARM 26.4 Sub-Chapter 13.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Casper Field Office will not be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.s.t. on January 24, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify 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 amendment may request a meeting 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 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 27, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-314 Filed 1-6-89; 8:45 a.m.]

BILLING CODE 4310-05-M

---

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on Proposed Amendments to the Oklahoma Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of proposed amendments submitted by Oklahoma as modifications to its permanent regulatory program (hereinafter referred to as the Oklahoma program).

The proposed amendments consist of changes to restrictions on financial interests of State employees, fish and wildlife information, performance bonds, and individual civil penalties. The amendments are intended to revise the Oklahoma program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Oklahoma program and proposed amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

DATES: Written comments relating to Oklahoma's proposed modification of its program not received on or before 4:00 p.m., c.s.t. on February 8, 1989, will not necessarily be considered in the decision process.

Upon request, OSMRE will hold a public hearing on the proposed amendments on February 3, 1989, beginning at 9:00 a.m., c.s.t.

OSMRE will accept requests for a public hearing until 4:30 p.m., c.s.t. on January 24, 1989. If no person has contacted OSMRE by that date to express an interest in testifying at the hearing, it will not be held. If only one person requests an opportunity to testify at the public hearing, a public meeting, rather than a hearing, will be held, and the results of the meeting will be included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand-delivered to Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Copies of the Oklahoma program, the proposed modifications to the program, and all written comments received in response to this notice will be available for public review at the Tulsa Field Office, OSMRE Headquarters Office, and the Oklahoma Department of Mines (ODM) during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting the Tulsa Field Office.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492.

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

The Oklahoma program was conditionally approved by the Secretary of the Interior on January 19, 1981 (46 FR 4910). Information pertinent to the general background, the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Oklahoma program can be found in the **Federal Register** notices of January 19, 1981 (46 FR 4910), April 2, 1982 (47 FR 14152), May 4, 1983 (48 FR 20050), and August 28, 1984 (49 FR 34000). Subsequent amendments to the Oklahoma program can be found at 30 CFR 936.15.

II. Submission of Amendments

In accordance with the provisions of 30 CFR 732.17(d) OSMRE notified the Oklahoma Department of Mines (ODM) by letter, dated August 18, 1988 (Administrative Record No. OK–874), of the changes to the Oklahoma program that OSMRE believed to be necessary because of revisions made to the Federal rules during the period between October 1, 1983 and June 15, 1988. By letter dated September 16, 1988 (Administrative Record No. OK–862) ODM submitted a revised rule package reflecting the changes it agreed should be made, and providing copies of current statutes to support its position that some of the changes were not necessary. The letter did not indicate that the revised rules were being submitted as proposed amendments to the Oklahoma program.

By letter dated October 6, 1988, OSMRE notified ODM, under the provisions of 30 CFR 732.17(f)(1) of the changes necessary to make the Oklahoma program no less stringent than SMCRA and no less effective than the Federal rules. ODM responded, by letter dated November 14, 1988, (Administrative Record No. OK–866) asking OSMRE to consider the revised rules submitted on September 16, 1988, as proposed amendments to the Oklahoma program. The package previously submitted consisted of all of the Oklahoma rules with revisions to: Part 773, Requirements for Permits and Permit Processing; Part 705, Restriction on Financial Interests of State Employees; Part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan; Part 800, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations; and adding Part 846, Individual Civil Penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15. If approved by OSMRE and promulgated by Oklahoma, the proposed amendments will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma, will not necessarily be considered in the final rulemaking or included in the Oklahoma Administrative Record.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 29, 1988.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–370 Filed 1–6–89; 8:45 am]

BILLING CODE 4310–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3503–2]

Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from December 27, 1988, to January 24, 1989, the deadline for receiving written comments on the Agency's proposed approval of a technical amendment to the state-wide sulfur dioxide emission limit as a revision to the Washington state implementation plan (SIP).

DATES: Comments must be received or postmarked on or before January 24, 1989.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Air Programs Branch [10A–88–4], Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101. Telephone: (206) 442–4253, FTS: 399–4253.

SUPPLEMENTARY INFORMATION: On November 7, 1988 (53 FR 44911) EPA solicited public comment on its proposal to approve a revision to WAC 173–400–040(6) (except paragraphs (a) and (b)) and its proposal to rescind approval of the exception provisions in the current SIP (WAC 173–400–040(6)(a) (i) and (ii)). The revision to WAC 173–400–040(6) involves a technical amendment which clarifies the averaging time for the sulfur dioxide emission limit.

On December 9, 1988 (53 FR 49680) EPA extended the public comment period until December 27, 1988. In response to a request for additional time to prepare comments, EPA is again extending the public comment period on this proposed rulemaking.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

Date: December 28, 1988.

Robie G. Russell,

Regional Administrator.

[FR Doc. 89–303 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 435

[FRL—3503–3]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to notice of data availability.

SUMMARY: On October 21, 1988, EPA published in the **Federal Register** a notice of data availability pertaining to effluent limitations guidelines and new source performance standards for the offshore subcategory of the oil and gas extraction point source category (53 FR 41356). Appendix A to that notice contained an analytical method for the measurement of oil content and diesel oil. The Agency inadvertently published an incomplete version of that method. Today's notice contains the correct version of that analytical method.

DATE: Comments on the October 21, 1988 notice of data availability and today's

correction thereto must be submitted by January 19, 1989.

ADDRESSES: Comments should be sent to Mr. Dennis Ruddy, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The supporting information and data described in the October 21, 1988 notice of data availability and today's correction thereto are available for inspection and copying at the EPA Public Information Reference Unit, Room 2402 (rear of EPA Library), 401 M Street, SW., Washington, DC. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information concerning today's notice may be obtained from Mr. Dennis Ruddy at the above address, or call (202) 382-7131.

SUPPLEMENTARY INFORMATION: On October 21, 1988, EPA published a notice of data availability in the **Federal Register** (53 FR 41356) presenting and analyzing new information for the purpose of establishing best available technology (BAT) effluent limitations guidelines and new source performance standards (NSPS) for the drilling fluids and drill cuttings waste streams generated by offshore oil and gas extraction facilities.

The October 21, 1988 notice included a proposed analytical method for the measurement of oil content and diesel oil in drilling wastes. The method was presented in Appendix A to the October 21, 1988 notice of data availability and was titled "Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID." (53 FR 41383-90) The Agency inadvertently published an incomplete version of Appendix A. Today's notice contains the correct version of Appendix A in its entirety.

The Agency has determined that the differences between the version of the analytical method that was published on October 21, 1988 and the version appearing today are not extensive enough to warrant extending the deadline for submission of comments on the notice of data availability. Therefore, comments on all aspects of the October 21, 1988 notice of data availability and the material presented in today's corrective notice must be submitted by January 19, 1989. This closing date for the comment period, an extension of the original deadline for comments, was announced in a **Federal Register** notice that was published on December 5, 1988 (53 FR 48947).

Appendix A—Proposed Method 1651—Oil Content and Diesel Oil in Drilling Muds and Drill Cuttings by Retort Gravimetry and GCFID

1. Scope and Application

1.1 This method is used to determine the oil content and the identity and concentration of diesel oil in drilling fluid (mud) samples. It is applicable to all mud types and may also be used to determine the oil content and diesel oil in drill cuttings.

1.2 This method may be used for compliance monitoring purposes as part of the "Effluent Limitations Guidelines and New Source Performance Standards for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category".

1.3 When this method is used to analyze samples for which there is no reference diesel oil, diesel oil identification should be supported by at least one additional qualitative technique. Method 1625 provides gas chromatograph/mass spectrometer (GC/MS) conditions appropriate for the qualitative and quantiative confirmation of the presence of the components of diesel oil (References 1-2).

1.4 The detection limit of this method is usually dependent upon the presence of other oils in the sample. Excluding interferences, estimated limits of 200 mg/kg of oil content and 100 mg/kg of diesel oil can be obtained.

1.5 Any modification of this method beyond those expressly permitted shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR 136.4 and 136.5.

1.6 The gas chromatography portions of this method are restricted to use by or under the supervision of analysts experienced in the use of gas chromatography and in the interpretation of gas chromatograms. Each laboratory that uses this method must generate acceptable results using the procedures described in Sections 8.2 and 12 of this method.

2. Summary of Method

2.1 A weighed amount of drilling mud is distilled using a retort apparatus. The distillate is extracted with methylene chloride and the extract is dried by passage through sodium sulfate. The extract is evaporated to dryness, and the total amount of oil in the sample is determined gravimetrically. The oil is redissolved in methylene chloride, an internal standard is added, and an aliquot is injected into a gas chromatograph (GC). The components of the oil are separated by the GC and detected using a flame ionization detector (FID).

2.2 Identification of diesel oil (qualitative analysis) is performed by comparing the pattern of GC peaks (rentention times and intensities) from the sample extract with the patter of GC peaks from a reference diesel oil sample. Identification of diesel oil is established when the reference diesel and sample patterns agree per the criteria in this method.

2.3 Quantitative analysis of diesel oil is performed using an internal standard technique.

3. Contamination and Interferences

3.1 Solvents, reagents, glassware and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms. All materials shall be demonstrated to be free from interferences under the conditions of the analysis by running method blanks initially and with each set of samples. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required. Glassware and, where possible, reagents are cleaned by solvent rinse or baking at 450 degrees C for one hour minimum.

3.2 There is no standard diesel oil. Oil components, as seen by GC-FID, will differ depending upon the oil source, the production date, production process, and the producer. In addition, there are three basic types of diesel oils: ASTM Designations No. 1-D, No. 2-D, and No. 4-D. The No. 2-D is the most common "diesel oil"; however, No. 2-D is sometimes blended with No. 1-D which has a lower boiling range. For rigorous identification and quantification of diesel oil in a drilling fluid sample by GC-FID, the chromatographic pattern from the diesel oil should be matched with the chromatographic pattern from a reference standard of the same diesel oil suspencted to be in the sample.

3.3 To aid in the identification of interferences, the chromatographic pattern from a reference sample of drilling fluid prior to use is compared to the chromatographic pattern of the drilling fluid after use. An interference is present when the pattern of the background oil does not match, but contributes substantially to, the pattern of the diesel oil in the sample.

3.4 Mineral oils are often added to drilling fluids for lubricity. These oils, when examined by GC-FID, contain some components common to diesel oil but have chromatographic patterns that are distinctly different from diesel oil.

The analyst must first determine if the sample chromatogram shows the presence of diesel, mineral, or a combination of both before reliable quantification can be performed. This method permits selection of GC peaks unique to diesel oil for determination of diesel oil in the presence of mineral oil.

4. Safety

4.1 The toxicity or carcinogenicity of each reagent used in this method has not been defined. Therefore, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory is responsible for maintaining a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of materials handling data sheets should also be made available to all personnel involved in the chemical analysis. Additional references to laboratory safety are available and have been identified (References 3–5) for the information of the analyst.

4.2 Methylene chloride has been classified as a known health hazard. All steps in this method which involve exposure to this compound shall be performed in an OSHA approved fume hood.

5. Apparatus and Materials

5.1 Sample bottle for discrete sampling

5.1.1 Bottle—4 oz Boston round wide mouth jar with Teflon lined screw cap (Sargent Welsh S–9184–72CA, or equivalent). New bottles are used as received with no further cleaning required.

5.1.2 Bottle mailer—to fit bottles above (Sargent Welsh 2306, or equivalent).

5.2 Distillation Apparatus

5.2.1 Retort—20 mL retort apparatus (IMCO Services Model No. R2100 or equivalent).

5.2.2 Glass wool—Pyrex (Corning 3950, or equivalent). Solvent extracted or baked at 450 degrees C for one hour minimum.

5.3 Extraction/drying apparatus

5.3.1 Separatory funnel—60 mL with Teflon stopcock.

5.3.2 Drying column—400 mm x 15 to 20 mm i.d. Pyrex chromatographic column equipped with coarse glass frit or glass wool plug.

5.3.3 Glass filtering funnel—crucible holder (Corning No. 9480, or equivalent).

5.3.4 Spatulas—stainless steel or Teflon

5.4 Evaporation/concentration apparatus

5.4.1 Kuderna-Danish (K–D) apparatus

5.4.1.1 Evaporation flask—500 mL (Kontes K–570001–0500, or equivalent), attached to concentrator tube with springs (Kontes K–662750–0012).

5.4.1.2. Concentrator tube—10 mL, graduated (Kontes K–570050–1025, or equivalent) with calibration verified. Ground glass stopper (size 19/22 joint) is used to prevent evaporation of extracts.

5.4.1.3 Snyder column—three ball macro (Kontes K–503000–0232, or equivalent).

5.4.1.4 Snyder column—two ball mircro (Kontes K–469002–0219, or equivalent).

5.4.1.5 Boiling chips

5.4.1.5.1 Glass or silicon carbide—approximately 10/40 mesh, extracted with methylene chloride and baked at 450 degrees C for one hr minimum.

5.4.1.5.2 Teflon (optional)—extracted with methylene chloride.

5.4.2 Water bath—heated, with concentric ring cover, capable of temperature control (+/−2 degrees C), installed in a fume hood.

5.4.3 Sample vials—amber glass, 1–5 mL with Teflon-lined screw or crimp cap, to fit GC autosampler.

5.5 Balances

5.5.1 Analytical—capable of weighing 0.1 mg. Calibration must be verified with class S weights each day of use.

5.5.2 Top loading—capable of weighing 10 mg.

5.6 Gas Chromatograph (GC)—analytical system with split injection, capillary column, temperature program with initial and final isothermal holds, and all required accessories including syringes, analytical columns, gases, detector, and recorder. The analytical system shall meet the performance specifications in Section 12.

5.6.1 Column—30 +/−5m × 0.25 +/−0.02mm i.d., 99% methyl, 1% vinyl, 1.0 um film thickness, bonded phase fused silica capillary (Supeloco SPB–1, or equivalent).

5.6.2 Detector—flame ionization. This detector has proven effective in the analyses of drilling fluids for diesel oil, and was used to develop the method performance statements in Section 16. Guidelines for using alternate detectors are provided in Section 11.1.

5.7 GC Data system—shall collect and record GC data, store GC runs in magnetic memory or on magnetic disk or tape, process GC data, compute peak areas, store calibration data including retention times and response factors, identify GC peaks through retention times, and compute concentrations.

5.7.1 Data acquisition—GC data shall be collected continuously throughout the analysis and stored on a mass storage device.

5.7.2 Response factors and calibration curves—the data system shall be used to record and maintain lists of response factors, and multi-point calibration curves (Section 7). Computations of relative standard deviation (coefficient of variation; CV) are used for testing calibration linearity. Statistics on initial (Section 8.2) and ongoing (Section 12.5) performance shall be computed and maintained.

5.7.3 Data processing—the data system shall be used to search, locate, identify, and quantify the compounds of interest in each GC analysis. Software routines shall be employed to compute and record retention times and peak areas. Displays of chromatograms and library comparisons are required to verify results.

6. Reagents

6.1 Sodium sulfate—anhydrous, (ACS) granular.

6.2 Methylene chloride—Nanograde or equivalent.

6.3 Reagent water—water in which the compounds of interest and interfering compounds are not detected by this method.

6.4 Internal standard—dissolve 1.0 g of 1,3,5-Trichlorobenzene (Kodak No. 1801 or equivalent) in 100 mL methylene chloride. Store in glass and tightly cap with Teflon line did to prevent loss of solvent by evaporation. Label with the concentration and date. Mark the level of the meniscus on the bottle to detect solvent loss.

6.5 Calibration standards—calibration standards are prepared from the same diesel oil expected to be in the sample; otherwise, No. 2 diesel oil is used. Calibration standards are prepared at the concentrations shown in Table 1.

6.5.1 Weigh the appropriate amount of oil into a tared 10 mL volumetric flask and dilute to volume with methylene chloride.

6.5.2 Using a micropipet or microsyringe, transfer 100 uL of each reference standard solution (Section 6.5.1) to a GC injection vial. Add 100 uL of the TCB internal standard (Section 6.4) to each vial and mix thoroughly. Calibration standards are made fresh daily to avoid solvent loss by evaporation.

6.6 QC standard—used for tests of initial (Section 8.2) and ongoing (Section 12.5) performance. Prepare a reference mud sample containing 20,000 mg/kg of diesel by adding 20.0 +/−0.2mg of No.

2 diesel oil and 10.0 +/−0.1 g of EPA Generic Mud No. 8 (Reference 6) to a clean retort cup (see Section 10.1). Mix the mud and diesel oil thoroughly with a metal spatula.

7. Calibration

7.1 Establish gas chromatographic operating conditions given in Table 2. Verify that the GC meets the performance criteria (Section 12) and the estimated detection limit (Section 1.4). The gas chromatographic system is calibrated using the internal standard technique.

7.2 Internal standard calibration procedure—1,3,5-Trichlorobenzene (TCB) has been shown to be free of interferences from the diesel oils tested in the development of this method. However, if an interference is known or suspected, the analyst must choose an alternative internal standard that is free from interferences.

7.2.1 Inject 1 uL of each reference oil standard containing the internal standard (Table 1 and Section 6.5.2) into the GC–FID. The TCB will elute approximately 8.5 minutes after injection. For the GC–FID used in the development of this method, the TCB internal standard peak was 30 to 50 percent of full scale at an attenuator setting of 8E–11 amp.

7.2.2 Individual response factors

7.2.2.1 Tabulate the peak area responses against concentration for each of the 10 largest peaks in the chromatogram (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the internal standard peak). (See Section 13 for guidance on peak selection.) Calculate response factors (RF) for each peak using the following equation:

Equation 1:

$$RF = \frac{(A_s)(C_{is})}{(A_{is})(C_s)}$$

where:

A_s = Area of the peak to be measured.
A_{is} = Area of the internal standard peak.
C_s = Concentration of the peak to be measured (mg/kg).
C_{is} = Concentration of the internal standard (mg/kg).

7.2.2.2 If the RF is constant (<15% CV) over the calibration range (Table 1), the RF can be assumed to be invariant and the average RF can be used for calculations. Alternatively, the results can be used to plot a calibration curve of response rations, A_s/A_{is}, vs RF.

7.2.2.3 Calibration verification—the average RF or a point on the calibration curve shall be verified on each working day by the measurement of one or more calibration standards. If the RF for any peak varies from the RF obtained in the calibration by more than ±15 percent, the test shall be repeated using a fresh calibration standard. Alternatively, a new calibration curve shall be prepared.

7.2.3 Combined response factor—to reduce the error associated with the measurement of a single peak, a combined response factor is used for computation of the diesel oil concentration. This combined response factor is the sum of the individual response factors as given in equations 2 or 3:

Equation 2:

RF combined = RF(1) + RF(2) . . . + RF(n)

Equation 3:

$$RF\ combined = \frac{[A_{s(1)} + A_{s(2)} \cdot \cdot \cdot + A_{s(n)}](C_{is})}{(A_{is})(C_s)}$$

where:

n is the number of individual peaks
$A_{s(1)} \cdot \cdot \cdot A_{(n)}$ are the areas of the individual peaks.

8. Quality Assurance/Quality Control

8.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 7). The minimum requirements of this program consist of an initial demonstration of laboratory capability, an ongoing analysis of standards and blanks as a test of continued performance, analyses of spiked samples to assess accuracy, and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

8.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 8.2.

8.1.2 The analyst is permitted to modify this method to improve separations or lower the costs of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to achieve the estimated detection limit (Section 1.4) and to repeat the procedure in Section 8.2 to demonstrate method performance.

8.1.3 Analyses of spiked samples are required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in Section 8.3.

8.1.4 Analyses of duplicate samples are required to demonstrate method precision. The procedure and QC criteria for duplicates are described in § 8.4.

8.1.5 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in Section 8.5.

8.1.6 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the QC standard (Section 6.6) that the analysis system is in control. These procedures are described in Section 12.

8.1.7 The laboratory shall maintain records to define the quality of data that is generated. Development of accuracy statements is described in Sections 8.3.4 and 12.5.

8.2 Initial precision and accuracy—to establish the ability to generate acceptable precision and accuracy, the analyst shall perform the following operations:

8.2.1 Retort, extract, concentrate, and analyze four samples of the QC standard (Sections 6.6 and 10.1.3) according to the procedure beginning in Section 10.

8.2.2 Using results of the set of four analyses, compute the average recovery (X) in mg/kg and the standard deviation of the recovery (s) in mg/kg for each sample by the internal standard method (Sections 7.2 and 14.2).

8.2.3 For each compound, compare s and X with the corresponding limits for initial precision and accuracy in Table 4. If s and X meet the acceptance criteria, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method and the manufacturer's instructions, correct the problem, and repeat the test.

8.3 Method accuracy—the laboratory shall spike a minimum of 20 percent (one sample in each set of five samples) of all drilling fluid samples. This sample shall be spiked with the diesel oil that was added to the drilling fluid. If a reference standard of diesel oil that was added to the drilling fluid is not available, No. 2 diesel oil shall be used for this spike. If doubt of the identity and concentration of diesel oil in any of the remaining 80 percent of the samples exists, that sample shall be spiked to confirm the identity and establish the diesel oil concentration.

8.3.1 The concentration of the spike in the sample shall be determined as follows:

8.3.1.1 If, as in compliance monitoring, the concentration of the oil in the sample is being checked against a regulatory concentration limit, the spike shall be at that limit or at one to five times higher than the background concentration determined in Section 8.3.2, whichever concentration is larger.

8.3.1.2 If the concentration of the oil in a sample is not being checked against a limit, the spike shall be at the concentration of the QC standard (Section 6.6) or at one to five times higher than the background concentration, whichever concentration is larger.

8.3.2 Analyze one sample aliquot to determine the background concentration (B) of oil content and of diesel oil. If necessary, prepare a standard solution appropriate to produce a level in the sample at the regulatory concentration limit or at one to five times the background concentration (per Section 8.3.1). Spike a second sample aliquot with the standard solution and analyze it to determine the concentration after spiking (A) of each analyte. Calculate the percent recovery (P) of oil content and of diesel oil:

$P = 100(A-B)/T$

where T is the true value of the spike.

8.3.3 Compare the percent recovery for oil content and for diesel oil with the corresponding QC acceptance criteria in Table 4. If the results of the spike fail the acceptance criteria, and the recovery of QC standard in the ongoing precision and recovery test (Sections 10.1.3 and 12.5) is within the acceptance criteria in Table 4, and interference may be present (see Sections 3 and 15 for identification of interferences). In this case, the result may not be reported for regulatory compliance purposes. If, however, the results of both the spike and the ongoing precision and recovery test fail the acceptance criteria, the analytical system is judged to be out of control and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.3.4 As part of the QA program for the laboratory, method accuracy for samples shall be assessed and records shall be maintained. After the analysis of five spiked samples in which the recovery passes the test in Section 8.3, compute the average percent recovery (P) and the standard deviation of the percent recovery (s_p). Express the accuracy assessment as a percent recovery interval from $P-2s_p$ to $P+2s_p$. For example, if $P=90\%$ and $s_p=10\%$ for five analyses of diesel oil, the accuracy interval is expressed as 70 to 110%. Update the accuracy assessment on a regular basis (*e.g.*, after each 5 to 10 new accuracy measurements).

8.4 The laboratory shall analyze duplicate samples for each drilling fluid type at a minimum of 20 percent (one sample for each five sample set). A duplicate sample shall consist of a well-mixed, representative aliquot of the sample.

8.4.1 Analyze one sample in the set in duplicate per the procedure beginning in Section 10.

8.4.2 Compute the relative percent difference (RPD) between the two results per the following equation:

Equation 4:

$$RPD = \frac{(D1-D2)}{(D1+D2)/2} \times 100$$

where:

D1 = concentration of diesel in the sample

D2 = concentration of diesel oil in the second (duplicate) sample

8.4.3 The relative percent difference for duplicates shall meet the acceptance criteria in Table 5. If the criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected, and the sample set reanalyzed.

8.5 Blanks—reagent water blanks are analyzed to demonstrate freedom from contamination.

8.5.1 Extract and concentrate a reagent water blank initially and with each sample set (samples started through the analysis on the same day, to a maximum of 5 samples). Analyze the blank immediately after analysis of the QC standard (Section 6.6) to demonstrate freedom from contamination.

8.5.2 If any of the components of diesel oil or any potentially interfering compound is detected in a blank, analysis of samples is halted until the source of contamination is eliminated and a blank shows no evidence of contamination.

8.6 Comparison of gravimetric and diesel oil measurements.

8.6.1 Compare the concentration of the oil content (Section 14.1.2) determined gravimetrically with the diesel oil concentration determined by GCFID (Section 14.2.2). If the diesel oil concentration exceeds the gravimetric oil concentration, the analysis has been performed improperly. Correct the error or repeat the sample analysis beginning with Section 10.

8.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for initial (Section 8.2) and ongoing (Section 12.5) precision and recovery should be identical, so that the most precise results will be obtained. The GC instrument will provide the most reproducible results if dedicated to the settings and conditions required for the analyses of the analyte given in this method.

8.8 Depending on specific program requirements, field replicates and field spikes of diesel oil into samples may be required to assess the precision and accuracy of the sampling and sample transporting techniques.

9. Sample Collection, Preservation, and Handling

9.1 Collect drilling fluid samples in wide-mouth glass containers following conventional sampling practices (Reference 8).

9.2 Samples must be representative of the entire bulk drilling fluid. In some instances, composite samples may be required.

9.3 Maintain samples at 0 to 4 degrees C from the time of collection until extraction.

9.4 Sample and extract holding times for this method have not yet been established. However, based on tests of wastewater for the analytes determined in this method, samples shall be extracted within seven days of collection and extracts shall be analyzed within 40 days of extraction.

9.5 As a precaution against analyte and solvent loss or degradation, sample extracts are stored in glass bottles with Teflon lined caps, in the dark, at −20 to −10 degrees C.

10. Sample Extraction and Concentration

10.1 Retort

10.1.1 Tare the retort sample cup and cap to the nearest 0.1 g. Transfer a well homogenized and representative portion

of the drilling fluid to be tested into the sample cup. Do not fill the retort cup to the top so that excess sample must be wiped off. Place the cap on the cup and reweigh. Record the weight of the sample to the nearest 0.1 g. Note: On agitation, most drilling fluids entrain air as small bubbles. The extent of air entrainment is uncertain and is difficult to detect when the mud is poured into the retort cup. By weighing the drilling fluid, the quantitative detection of diesel oil is improved. In addition, by using a gravimetric measurement of the amount of sample, the retort cup does not need to be completely filled. This procedure avoids the error that occurs when the cup is filled and the oil rises to the surface of the sample and must be wiped off (as occurs if the manufacturer's instructions are followed), thus resulting in a loss of oil.

10.1.2 Follow the manufacturer's instructions for retort of the drilling fluid. Substitute 6 g of loosely packed glass wool for the steel wool in the manufacturer's instructions and distill the sample into a glass receiver. The presence of solids in the distillate require that the distillation be rerun starting with a new portion of sample. Placing more glass wool in the retort expansion chamber, per the manufacturer's instructions, will help prevent the solids from being carried over in the distillation.

10.1.3 QC standard—used for tests of initial (section 8.2) and ongoing (section 12.5) precision and accuracy. For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a QC sample as follows:

10.1.3.1 Place the QC standard (section 6.y) in the retort cup beginning in section 10.1.

10.1.3.2 Analyze the QC standard beginning with section 10.1.2 then proceeding to section 10.2.

10.1.4 Blank—For the initial set of four samples (section 8.2) and for each set of samples started through the retort process on the same working day (to a maximum of five), prepare a blank as follows:

10.1.4.1 Place 10 mL of reagent water in a clean, tared, retort cup and weigh to the nearest mg. Record the weight of the reagent water.

10.1.4.2 Analyze the blank beginning with section 10.1.2 then proceeding to section 10.2.

10.2 Extraction and drying.

10.2.1 After the distillation is complete, pour the retort distillate into a 60 mL separatory funnel. Quantitatively rinse the inner surfaces of the retort stem and condenser with methylene chloride into the separatory funnel. Rinse the receiver with two full receiver volumes of methylene chloride and add to the separatory funnel.

10.2.2 Stopper and shake the funnel for one minute, with periodic venting to prevent a buildup of gas pressure. Allow the layers to separate. Prepare a glass filtering funnel by plugging the bottom with a piece of glass wool and pouring in 1 to 2 inches of anhydrous sodium sulfate. Alternatively, a drying column may be used. Wet the funnel or column with a small portion of methylene chloride and allow the methylene chloride to drain to a waste container.

10.2.3 Place the glass filtering funnel or drying column into the top of a Kuderna-Danish (K–D) flask equipped with a preweighed 10 mL receiving flask. Add a preweighed boiling chip to the receiving flask. Drain the methylene chloride (lower) layer into the glass filtering funnel or drying column, and collect the extract in the K–D flask.

10.2.4 Repeat the methylene chloride extraction twice more, rinsing the retort with two thorough washings each time and draining each methylene chloride extract through the funnel or drying column into the K–D flask.

10.3 Concentration

10.3.1 Place a Snyder column on the K–D flask. Prewet the Snyder column by adding about one mL of methylene chloride to the top. Place the K/D apparatus on a hot water bath (60 to 65 degrees C) so that the concentrator tube is partially immersed in the hot water, and the entire lower rounded surface of the flask is bathed with hot vapor. Adjust the vertical position and the water temperature as required to complete the concentration in 15 to 20 minutes. At the proper rate of distillation, the balls of the column will actively chatter but the chambers will not flood with condensed solvent. Concentrate the sample until it is free of methylene chloride. Remove the K–D apparatus from the hot water bath and allow to cool.

10.3.2 Weigh and record the final weight of the receiving flask.

10.3.3 Dissolve the oil in methylene chloride and adjust the final volume to 1.0 mL. If the extract did not concentrate to a final volume of 1.0 mL or less, adjust the final volume to 10.0 mL.

11. Gas Chromatography

11.1 Table 3 lists the retention times that can be achieved under the condition in Table 2 for the n-alkanes of interest. Examples of separations that can be achieved are shown in Figure 1.[1] Other retort devices, columns, chromatographic conditions, or detectors may be used if the estimated detection limits (Section 1.4) and the requirements of Section 8.2 are met.

11.2 Using a micropipet or microsyringe, transfer equal 100 uL volumes of the sample extract or QC standard extract (Section 10.3.3) and the TCB internal standard solution (Section 6.4) into a GC injection vial. Cap tightly and mix thoroughly.

11.3 Inject 1 uL of the sample extract or reference standard into the GC using the conditions in Table 2.

11.4 Begin data collection and the temperature program at the time of injection.

11.5 If the area of any peak exceeds the calibration range of the system, make a 10-fold dilution of the extract (Section 10.3.3), mix a 100 uL aliquot of this dilute extract with 90 uL of the internal standard solution (Section 6.4), and reanalyze.

12. System and Laboratory Performance

12.1 At the beginning of each working day during which analyses are performed, GC calibration is verified. For these tests, analysis of the 300 mg/mL calibration standard (Table 1) shall be used to verify all performance criteria. Adjustment and/or recalibration (per Section 7) shall be performed until all performance criteria are met. Only after all performance criteria are met may the QC standard, blank, and samples be analyzed.

12.2 Retention times

12.2.1 Retention time of the internal standard—the absolute retention time of the TCB internal standard shall be within the range of 7.96 to 8.08 minutes.

12.2.2 Relative retention times of the n-alkanes—the retention times of the n-alkanes relative to the TCB internal standard shall be within the limits given in Table 4.

12.3 Calibration verification

12.3.1 Compute the response factor for each peak by the internal standard technique (Section 7.2).

12.3.2 For each peak, compare the response factor with the response factor from the initial calibration (Section 7.2.2). If all response factors are within ±15 percent of their respective values in the initial calibration, system calibration has been verified. If not, prepare a fresh calibration standard and repeat the test (Section 12.1), or recalibrate (Section 7).

[1] Figure 1—Sample Chromatograms, is not published in the **Federal Register** but is available in the public docket. See "Addresses" section

12.4 Multiple GC peaks—each n-alkane shall give a single, distinct GC peak.

12.5 Ongoing precision and accuracy

12.5.1 Compute the oil content concentration and the concentration of diesel oil in the QC standard in each sample set (Section 10.1.3) prior to analysis of any sample in the set.

12.5.2 Compare the concentration with the QC limit in Table 4. If the concentrations of oil content and of diesel oil in the QC standard meet the acceptance criteria, system performance is acceptable and analysis of samples may proceed. If, however, the concentrations do not meet the acceptance criteria, system performance is unacceptable. In this event, correct the problem, reprocess the sample set (Section 10), and repeat the ongoing precision and accuracy test (Sections 10.1.3 and 12.5).

12.5.3 Add results that pass the specifications in Section 12.5.2 to initial and previous ongoing data. Update QC charts to form a graphic representation of continued laboratory performance. Develop statements of laboratory accuracy for oil content and diesel oil in drilling fluids by calculating the average percent recovery (R) and the standard deviation of percent recovery (s_r). Express the accuracy statement as a recovery interval from $R-2s_r$ to $R+2s_r$. For example, if R=95 percent and s_r=5 percent, the accuracy is 85 to 105 percent.

13. Qualitative Determination

If less than 10 GC peaks (excluding the solvent peak, the internal standard peak, and any peaks that elute prior to the TCB internal standard peak) are present in the analysis of the sample, and the QC tests (Sections 8 and 12) for the sample set are acceptable, diesel oil is not present in the sample. If 10 or more GC peaks are present in the analysis of the sample, diesel oil is identified by comparing the relative retention times and relative areas of peaks from the analysis of the concentrated extract of a mud sample to the relative retention times and relative areas of peaks from the reference standard.

13.1 Relative retention times—the n-alkane peaks (Table 3) shall be within the limits in Table 3. If the relative retention times are not within these limits, repeat the analysis of the reference diesel oil and the analysis of concentrated extract of the mud sample and compare the relative retention times. If the relative retention times of the n-alkane peaks do not agree, the retention times of the 10 largest components that agree within ±1 percent are used for the identification of diesel oil (per Section 13.2) and for determination of the concentration of diesel oil in the mud sample (per Section 14).

13.2 Distribution of peak area ratios (Reference 9)—diesel oil is further identified by comparing the distribution of the area ratios of peaks in the chromatogram of the calibration standard (Section 6.5) to these same ratios in the chromatogram of the sample.

13.2.1 Compare the chromatograms of the calibration standard and the sample.

13.2.2 Select the 10 peaks largest in area in the chromatogram of the sample that are in relative retention time agreement with the corresponding peaks in the calibration standard (Section 13.1) and appear to be unique to the calibration standard. Exclude the solvent peak, the internal standard peak, any peaks that elute prior to the internal standard peak, and any multiplet and unresolved peaks. For most samples, these will be the n-alkane peaks.

13.2.3 Using the largest peak of the 10 peaks as reference, divide the area of each of the other nine peaks by the area of this largest peak. Repeat this division process for the same 10 peaks in the calibration standard.

13.2.4 Compare the ratios of areas of the nine peaks in the sample with the respective ratios of the areas of the nine corresponding peaks in the reference standard.

13.2.4.1 If all of these ratios agree within ±21 percent, diesel has been positively identified. The quantity of diesel oil is then determined per Section 14.

13.2.4.2 If any of the ratios do not agree with ±21 percent, an interference is suspected.

13.2.4.3 If other peaks can be found that agree in relative retention time (Section 13.1) and in ratio (Section 13.2.4.1), use these peaks for quantitation per Section 14. If 10 peaks that agree cannot be found, Method 1625 (Revision C or greater) shall then be used to determine the presence and concentrations of the polynuclear atomic hydrocarbons (PAH's) present in the sample.

14. Quantitative Determination

14.1 Oil content by gravimetry.

14.1.1 Subtract the weight of the preweighed receiving flask and boiling chip (Section 10.2.3) from the final weight of the receiving flask (Section 10.3.2).

14.1.2 Calculate the concentration of oil content in the sample using the following equation:

Equation 5:

$$C(mg/kg)=\frac{W_f}{W_s}\times 1000$$

where:

W_f = final weight of oil in mg (from Section 14.1.1)

W_s = wet weight of sample in grams (from Section 10.1.1)

14.2 Diesel oil by gas chromatography

14.2.1 Compute the concentration of diesel oil in the sample extract using the combined response factor given in Section 7.3.3 for the 10 largest peaks chosen in Section 13 using the following equation:

Equation 6:

$$C_{ex}(mg/mL)=\frac{(C_{is})[A_{s(1)}+A_{s(2)}\ \cdots\ +A_{s(n)}]}{(A_{is})(RF\ combined)}$$

where:

C_{ex} is the concentration of the oil in the extract

14.2.2 Calculate the concentration of diesel oil (in mg/kg) in the sample as follows:

Equation 7:

$$C(mg/kg)=\frac{(C_{ex})(V_{ex})}{(W_s)}\times 1000$$

where:

V_{ex} = final extract volume in mL (from Section 10.3.3 or 14.2.3)

W_s = wet weight of sample in grams (from Section 10.1.1)

14.2.3 If the area of any peak in the chromatographic pattern exceeds the calibration range of the GC, the extract is diluted by a factor of 10 with methylene chloride, 100 uL is withdrawn

and mixed with 90 uL of the internal standard solution (Section 6.4) and the diluted extract is reanalyzed.

14.3 Results of analyses of drilling fluids are reported in units of mg/kg (wet weight) to three significant figures. Results for samples that have been diluted are reported at the least dilute level at which the peak areas are within the calibration range (Section 14.2.3).

15. Complex Samples

15.1 The most common interference in the determination of diesel oil is from mineral oil in the drilling fluid (see Sections 3 and 13). Drilling fluids may also contain proprietary lubricity additives that can interfere with the identification and quantification of diesel oil.

15.2 The presence of mineral oil or other interfering oils and additives can often be determined by comparing the pattern of chromatographic peaks in the sample with the patterns of chromatographic peaks in the reference standard (Sections 6.5 and 10.1.3) and in the spiked sample (Section 8.3).

15.3 In cases where there is a mixture of diesel and mineral oil, the analyst may have to choose some of the smaller early or late eluting peaks present in the chromatographic pattern of the diesel oil, and not present in the chromatographic pattern of the mineral oil, to determine the diesel content. Quantification using these peaks is performed by using these peaks for calibration (Section 7) and for determination of the final concentration (Section 14).

16. Method Performance

16.1 This method was developed by two laboratories that tested for diesel oil in drilling fluids (mainly drilling muds) over a two-period. The performance data for this method are based on the performance of the method in these two laboratories (Reference 10).

16.2 The most commonly occurring drilling fluid in the tests of this method was a seawater lignosulfonate mud (EPA Generic Mud No. 8). The estimated detection limit for diesel oil in this mud is 100 ug/kg.

References

1. Brown, John S, "Organic Chemical Characterization of Diesel and Mineral Oils Used as Drilling Mud Additives", Proceedings of Tenth Annual Analytical Symposium, USEPA, Industrial Technology Division (WH-552), 401 M St., Washington, DC 20460, March 19-20, 1986.

2. Brown, John S, "Final Report for Research Program on: Organic Chemical Characterization of Diesel and Mineral Oils used as Drilling Mud Additives", Phase II, Contract Reference Agreement No. 501-P-5476R, to Offshore Operators Committee, Environmental Subcommittee, Houston, TX, Prepared by Battelle Ocean Science and Technology Department, 397 Washington St., Duxbury, MA 02332.

3. "Carcinogens—Working With Carcinogens", Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77-206, August 1977.

4. "OSHA Safety and Health Standards, General Industry", [29 CFR Part 1910], Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).

5. "Safety in Academic Chemistry Laboratories", American Chemical Society Publication, Committee on Chemical Safety, 3rd Edition, 1979.

6. Available through the EPA Sample Control Center, P.O. Box 1407, Alexandria, VA 22313 (703-557-5040).

7. "Handbook of Analytical Quality Control in Water and Wastewater Laboratories", USEPA, EMSL, Cincinatti, OH 45268, EPA-600/4-79-019 (March 1979).

8. "Standard Practice for Sampling Water", ASTM Annual Book of Standards, ASTM, Philadelphia, PA 76 (1980).

9. Boehm, Paul D., and Sauer, Theodore C., "Review and Evaluation of Draft EPA Method 1651 Total Oil and Diesel Oil in Drilling Discharges by Retort Gravimetry and GC-FID", Battelle Ocean Sciences, 397 Washington St., Duxbury, MA 02332 (March 4, 1988).

10. Rushneck, D.R., and Eynon B.P., "Precision and Recovery Analysis of DPMP Diesel Measurements", Memorandum to Dennis Ruddy, USEPA, Industrial Technology Division (WH-552), 401 M St. SW., Washington, DC 20460 (23 August 1987, draft).

TABLE 1.—CONCENTRATION OF CALIBRATION STANDARDS

Expected concentration in sample	Wt of Diesel oil in 10 mL volumetric[1] (g)	Concentration in standard
50,000 mg/kg	([2])	
30,000 mg/kg	7.6	760 mg/mL
10,000 mg/kg	3.0	300 mg/mL
5,000 mg/kg	1.5	150 mg/mL
2,000 mg/kg	0.6	60 mg/mL

[1] Weigh oil to the nearest mg.
[2] Use undiluted oil.

TABLE 2.—GAS CHROMATOGRAPHIC OPERATING CONDITIONS—METHOD 1651[1]

Injection port, transfer line, and detector temperatures = 275 deg. C
Column temperature program:
- Initial temperature: 90 deg. C
- Initial time: 0 minutes
- Ramp: 90-250 deg. C @ 5 deg. C per minute
- Final temperature: 250 deg. C
- Final hold: 10 minutes or until all peaks have eluted.

Carrier gas and flow rates:
- Carrier: nitrogen or helium
- Velocity: 20-40 cm/sec @ 90 deg. C
- Split ratio: 80:1-120:1
- Makeup gas: as required by manufacturer

Hydrogen and air flow rates: as specified by manufacturer
Detector amplifier settings: 10-11 amp full scale. Attenuation is adjusted so that the highest peaks are on scale in the most concentrated standard.
Recorder: Chart speed of 1-2 cm/min (fixed).

[1] Conditions are approximate and can be adjusted to meet the performance criteria in Section 12.

TABLE 3—RETENTION TIMES AND RELATIVE RETENTION TIME LIMITS FOR MAJOR COMPONENTS OF DIESEL OIL—METHOD 1651

Retention time	Compound	
	Mean	Relative
TCB	8.0	1.00-1.00
n-C12	9.9	1.22-1.24
n-C13	12.6	1.55-1.57
n-C14	15.3	1.89-1.92
n-C15	17.9	2.21-2.25
n-C16	20.4	2.52-2.56
n-C17	22.9	2.82-2.88
n-C18	25.2	3.12-3.15
n-C19	27.3	3.39-3.43
n-C20	29.4	3.66-3.71
n-C21	31.5	3.90-3.97
n-C22	33.4	4.14-4.21
n-C23	35.3	4.37-4.45
n-C24	37.1	4.58-4.69

TABLE 4.—QC ACCEPTANCE CRITERIA FOR PRECISION AND RECOVERY—METHOD 1651

Analyte	Test Concentration (mg/kg)	Limit for s (mg/kg)	Range for X (mg/kg)	Range for P (mg/kg)
Oil Content by gravimetry	20,000	3,400	18,000-23,700	16,700-24,900
	n [1]	0.17n	0.88n- 1.16n	0.82n- 1.22n
Diesel oil by GC	20,000	3,600	17,200-20,300	13,600-21,400
	n [1]	0.18n	0.80n- 1.08n	0.73n- 1.14n

[1] For other test concentrations in the range of 1,000—50,000 mg/kg, assuming a spike to background ratio of 5:1.

TABLE 5—QC ACCEPTANCE CRITERIA FOR DUPLICATES—METHOD 1651

Concentration detected (mg/kg)	Relative percent difference	
	Oil content	Diesel oil
500	36	94
750	30	68
1,000	28	54
2,000	24	34
5,000	21	22
10,000	21	18
20,000	20	16
50,000	20	15

Dated: December 27, 1988.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 89-304 Filed 1-6-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 88-034N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that meetings of the Meat and Poultry and Seafood Subcommittees of the National Advisory Committee on Microbiological Criteria for Foods will be held on Monday, Tuesday, and Wednesday, January 23-25, 1989, from 9:00 a.m. to 5:00 p.m., at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microoganisms that indicate whether foods have been produced using good manufacturing practices.

The subcommittees, which are comprised of committee members, will be meeting to review and discuss assignments referred to them by the full committee and to prepare comments on those assignments.

The meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Ms. Catherine M. DeRoever, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoever on (202) 447-9150.

Done at Washington, DC on: January 5, 1989.

Kenneth A. Gilles,

Chairman.

[FR Doc. 89-505 Filed 1-6-89; 8:55 am]

BILLING CODE 3410-DM-M

Federal Grain Inspection Service

Designation Renewal of the Lima Agency (OH) and the State of Virginia (VA)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Lima Grain Inspection Service, Inc., and the Virginia Department of Agriculture and Consumer Services as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1989.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Lima's and Virginia's designations terminate on January 31, 1989, and requested applications for official agency designation to provide official services within specified geographic areas in the August 2, 1988, **Federal Register** (53 FR 29075). Applications were to be postmarked by September 1, 1988. Lima and Virginia were the only applicants for designation in their area and each applid for designation renewal in the entire area currently assigned to that agency.

The Service announced the applicant names in the October 5, 1988, **Federal Register** (53 FR 39121) and requested comments on the applicants for designation. Comments were to be postmarked by November 17, 1988; no comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and, in accordance with section 7(f)(1)(B), determined that Lima and Virginia are able to provide official services in the geographic area for which the Service is renewing their designation. Effective February 1, 1989, and terminating January 31, 1992, Lima is designated to provide official inspection services and Virginia is designated to provide official inspection and Class X or Class Y weighing services in their specified geographic areas, as previously described in the August 2 **Federal Register.**

Interested persons may obtain official services by contacting the agencies at the following telephone numbers: Lima at (419) 223-7866, and Virginia at (804) 786-3939.

Pub L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: January 3, 1989.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 89-310 Filed 1-6-89; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has requested an expedited OMB clearance review of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Certificate of Eligibility for Atlantic Billfishes.

Form number: None.

Type of Request: New collection—Expedited review requested.

Burden: 10 respondents, 16.5 reporting hours. Average hours per response is .33 hours.

Needs and Uses: A rulemaking for the Atlantic Billfish fishery would prohibit the sale of imported billfish caught in the management area. Persons wishing to import billfish must certify that the

fish were caught outside of the management area. The information is used for fishery management and enforcement.

Affected Public: Individuals, Business and other for-profit institutions, Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

BILLING CODE 3510-22-M

U.S. Dept. of Commerce
NOAA--NMFS
50 CFR 644-24(B)

CERTIFICATE OF ELIGIBILITY
-BILLFISHES-
(white marlin, blue marlin, sailfish, longbill spearfish)

Approved OMB No.
Approval Expires:

1. INFORMATION FOR FISHING VESSEL WHICH CAUGHT BILLFISHES

Name of Fishing Vessel _____

Homeport _____

2. PORT OF OFFLOADING _____

3. DATE OF OFFLOADING _____

4. DEALER'S DECLARATION

The undersigned hereby certifies that the above information is complete, true and correct to the best of his/her knowledge and that the billfishes accompanying this form were not harvested from their respective management units described below:

FOR BLUE MARLIN AND WHITE MARLIN: Waters of the North Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) north of 5° N. latitude.

FOR SAILFISH: Waters of the North and South Atlantic Ocean (including the Gulf of Mexico and the Caribbean Sea) west of 30° W. longitude.

FOR LONGBILL SPEARFISH: Waters of the entire North and South Atlantic Oceans (including the Gulf of Mexico and the Caribbean Sea).

NAME (PRINTED OR TYPED) SIGNATURE DATE

IMPORTANT - THIS INFORMATION IS REQUIRED BY LAW (16 U.S.C. 1801 ET SEQ., 50 CFR 644.24(b)). ANY PERSON FOUND TO BE IN VIOLATION OF THIS REGULATION IS SUBJECT TO THE CIVIL AND CRIMINAL PENALTY AND FORFEITURE PROVISIONS OF THE MAGNUSON ACT, INCLUDING FINES NOT TO EXCEED $25,000 PER VIOLATION.

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Rodney Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0648-xxxx), Washington, D.C. 20503.

[FR Doc. 89-312 Filed 1-6-89; 8:45 am]
BILLING CODE 3510-22-C

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Foreign Direct Investment in the United States.

Form Number: Agency—BE–15; OMB—0608–0034.

Type of Request: Revision of a currently approved collection.

Burden: 5,100 respondents; 32,700 reporting hours.

Average Hours Per Response: 6.4 hours.

Needs and Uses: The survey collects data on the financial and operating characteristics of U.S. companies that are foreign owned. Universe estimates are developed from the reported sample data. The data are needed to measure the size of foreign direct investment in the United States, monitor changes in such investment, assess its impact on the U.S. economy, and, based upon this assessment, make informed policy decisions regarding foreign direct investment in the U.S.

Affected Public: Businesses or other for-profit institutions.

Frequency: Annually (except years in which a BE–12 Benchmark Survey is taken).

Respondent's obligation: Mandatory.

OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 4, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–367 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Foreign Availability Assessments; Initiation of an Assessment on 2,4–Dichlorophenoxyacetic Acid (2,4–D) and on Salts and Esters of 2,4–D

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment.

SUMMARY: Under sections 5(f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses claims of foreign availability. Part 791 of the Export Administration Regulations establishes the procedures and criteria for initiating and reviewing claims of foreign availability on items controlled for national security purposes.

Pursuant to sections 5(f)(3) and (9) of the EAA, as amended by the Omnibus Trade and Competitiveness Act of 1988, OFA is publishing this notice:

On October 31, 1988, OFA accepted for filing a foreign availability submission claiming foreign availability of 2,4–Dichlorophenoxyacetic acid (2,4–D) and its salts and esters. These items are controlled for national security reasons under Export Control Commodity Number (ECCN) 4707B: Chlorophenoxyacetic acids and its salts and esters.

OFA accepted the submission and initiated an assessment of the foreign availability of 2,4–Dichlorophenoxyacetic acid and of Salts and esters of 2,4–D. Consistent with the requirements of the EAA, the Department intends to publish the results of the assessments by May 2, 1989.

To assist the Department in assessing the claim, the Department will receive any information regarding the foreign availability of 2,4–D. A person wishing to submit relevant information relating to this claim may submit it to the Office of Foreign Availability of the Department of Commerce. Such relevant information may include, but is not limited to, foreign manufacturers' catalogues, brochures, or operations or maintenance manuals, articles from reputable trade publications, photographs, and depositions based upon eyewitness accounts. The Office of Foreign Availability will carefully and fully consider all information received. The Office will use information received to supplement other information developed to evaluate the claim of foreign availability. Individuals submitting information and requesting confidential treatment of it are required to submit the information separately as described below.

DATES: The period for submission of information will close February 8, 1989.

ADDRESSES: Submit information relating to the allegation of foreign availability to: Irwin M. Pikus, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB701, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION: The Office of Foreign Availability will receive any information relating to this allegation of foreign availability. The Office of Foreign Availability will carefully and fully consider any information submitted during its analysis of the claim of foreign availability.

The Department will accept comments accompanied by a request that part or all of the material be treated confidentially because of its 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) 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 submissions 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.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for

submission of relevant information will close February 8, 1989. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this allegation of foreign availability to do so at the earliest possible time to permit the fullest consideration of their information by the Department.

All public information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. 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. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record of information received on the allegation of foreign availability will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4886, 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: December 29, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89-313 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held January 25, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1092, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report by Joint Factory Computing & Communications Subcommittee.
4. Discussion of CCL 1091 (machine tools).
5. Discussion of CCL 1532 (precision linear and angular measuring systems and specially designed components therefor).
6. Presentation on Technical Advisory Committee presentation at COCOM.
7. Discussion of Foreign Availability Assessment.

Executive Session

8. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552bf(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89-359 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee et al., Notice of Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components & Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held January 26, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The joint subcommittee advises the Office of Technology & Policy Analysis on overlapping issues such as: Computerized Numerical Contol (CNC), Computer-Aided-Design (CAD), Computer-Aided-Manufacturing (CAM), Computer Aided-Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Reports from Technical Advisory Committee Representatives.
4. Presentation and Status of Priority Projects: Lasers, Networking, CAD, Signal Processing.
5. Other Business.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal

Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit Office of Technology & Policy Analysis.

[FR Doc. 89-363 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held January 24, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of the Use of DES in Commercial Equipment.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377-2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-365 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Techical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held January 24, 1989, 2:00 p.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Licensing Procedures and Regulations Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of Draft Form 6031P.

The meeting will be open to the public with a limited number of seats. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Anne Ferrell on 202/377-2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis

[FR Doc. 89-364 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 3:00 p.m. in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Reports of the Subcommittees.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the

minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc 89–360 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 11:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of Controls on Data Communication Equipment.
4. Discussion of Simplication of CCL 1565A.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the subcommittee. For further information or copies of the minutes, call Betty Ferrell at (202) 377–2583.

Dated: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit Office of Technology & Policy Analysis.

[FR Doc. 89–362 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DT-M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held January 25, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department on licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the Public.
3. Presentation on Multiprocessor-Based Computers.

The entire meeting will be open to the public and a limited number of seats will be available. To the extend that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Betty Anne Ferrell at 202/377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–366 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held January 24, & 25, 1989, in the Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. On January 24 the meeting will convene at 9:00 a.m. in Room 4830. The meeting will reconvene in Executive Session on January 25 and continue to its conclusion in Room 4830. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Public discussion on matters related to activities of the Electronic Instrumentation Technical Advisory Committee. Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security.

Executive Session

4. Discussion on matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S. C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202–377–2583.

Date: December 30, 1988.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–361 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 417]

Withdrawal of Application and Temporary Extension, Subzone 50A, Toyota Plant, Long Beach, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

Whereas, on July 14, 1983, the Board authorized the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of FTZ 50, to establish Subzone 50A for the truck cargo body manufacturing plant of Toyota Auto Body, Inc., of California (Toyota) (formerly, Toyota Motor Manufacturing, U.S.A., Inc.) in Long Beach, California, for a period of five

years (to 7/14/88), subject to extension (Board Order 213, 48 FR 34792);

Whereas, BHC made application to the Board in April 1988 (FTZ Docket 21–88, filed 4/18/88, 53 FR 16178) for an indefinite extension of the authority of Subzone 50A;

Whereas, the authorization was temporarily extended to December 31, 1988 (Board Order 390, 53 FR 27542), to allow the Board to complete its review;

Whereas, on November 30, 1988, the applicant withdrew its application for an indefinite extension, due to changed circumstances, and requested a 90-day period in which to conclude zone status at the plant.

Now, therefore, the Board hereby orders:

That the authority for Subzone 50A is extended to April 1, 1989, to permit a winding up to operations conducted under zone procedures, and that FTZ Board Docket 21–88 is closed.

Signed at Washington, DC, this 29th day of December, 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–307 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 419]

Resolution and Order Approving the Application of the Port of Corpus Christi Authority for a Subzone at the Reynolds Metals Company Plant in the Corpus Christi, TX, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, filed with the Foreign-Trade Zones Board (the Board) on March 4, 1988, requesting special-purpose subzone status at the alumina plant of Reynolds Metals Company (Sherwin Plant) located in the Corpus Christi, Texas, port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application (filed March 4, 1988, FTZ Docket 15–88, 53 FR 8681), in due and proper form to the Board for authority to establish a special-purpose subzone at the alumina production plant of Reynolds Metals Company located in San Patricio and Aransas Counties, Texas (Corpus Christi area);

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed March 4, 1988, the Board hereby authorizes the establishment of a subzone at the Reynolds Corpus Christi area plant, designated on the records of the Board as Foreign-Trade Subzone No. 122K at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and regulations, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 30th day of December 1988, pursuant to the Order of the Board.

Foreign-Trade Zones Board.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–308 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 39–88]

Foreign-Trade Zone 83; Huntsville, AL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority (the Airport Authority), grantee of Foreign-Trade Zone 83, requesting authority to expand the zone to include additional acreage at the Huntsville International Airport, within the Huntsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 22, 1988.

The Huntsville zone was approved on February 24, 1983 (Board Order 209, 48 FR 9052, March 3, 1983, and presently covers 1,313 acres at the airport. The grantee has requested authority to include five adjacent tracts (234 acres) located at the intersection of Wall Triana Highway and James Record Road. The expansion is being requested because much of the area presently authorized for zone activity is being

utilized for operations that do not presently require zone procedures, and the grantee needs more space to accommodate interested zone users.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Joseph Lowry (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; David L. Willette, District Director, U.S. Customs Service, South Central Region, 150 North Royal, Suite 3004, P.O. Box 2748, Mobile, Alabama 36652; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District, Nashville, P.O. Box 1070, Nashville, Tennessee 37202–1070.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 21, 1989.

A copy of the application is available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Huntsville-Madison County Airport, P.O. Box 6085, Huntsville, Alabama 35806.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue NW., Room 2835, Washington, DC 20230.

Dated: December 30, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 89–375 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

[A-570-801]

Postponement of Public Hearing: Antidumping Duty Investigation on Certain Headwear From the People's Republic of China

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Office of Antidumping Compliance has further postponed the hearing on the antidumping duty investigation on certain headwear from the People's Republic of China.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Robin Gray or Anne D'Alauro, Office of Antidumping Compliance, Import Administration, International Trade Administration, United States Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION: On November 25, 1988, we published in the **Federal Register** (53 FR 47741) a notice of postponement of our final antidumping duty determination on certain headwear from the People's Republic of China. The notice also stated that the public hearing was postponed until January 13, 1989.

At the request of the respondents the public hearing on this antidumping duty investigation has been further postponed until January 25, 1989. The hearing will be held at 9:30 a.m. in room 3708, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 202030. Prehearing briefs are due to the Assistant Secretary by January 17, 1989.

This notice is published pursuant to section 774(b) of the Act.

December 28, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

[FR Doc. 89–376 Filed 1–6–89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine From Canada; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 14, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on live swine from Canada. We have now completed that review and determine the net subsidy to be *de minimus* for slaughter sows and boars and Can $0.022/lb. for all other live swine during the period April 3, 1985 through March 31, 1986.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Bernard Carreau, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 22189) the preliminary results of its administrative review of the countervailing duty order on live swine from Canada (50 FR 32880, August 15, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Canadian live swine. Such merchandise is currently classifiable under Harmonized Tariff Schedule items 0103.91.00 and 0103.92.00.

The review covers the period April 3, 1985 through March 31, 1986, and 28 programs:

1. Agricultural Stabilization Act
2. Record of Performance Program
3. Canada-Ontario Stabilization Plan for Hog Producers 1985
4. Alberta Red Meat Interim Insurance
5. Saskatchewan Hog Assured Returns
6. British Columbia Farm Income Insurance Plan
7. Manitoba Hog Income Stabilization Plan
8. New Brunswick Hog Price Stabilization Plan
9. Newfoundland Hog Price Support Program
10. Nova Scotia Pork Price Stabilization Program
11. Prince Edward Island Price Stabilization Program
12. Quebec Farm Income Stabilization Insurance Programs
13. New Burnswick Swine Assistance Program
14. New Brunswick Livestock Incentives Program
15. New Brunswick Hog Marketing Program
16. New Brunswick Swine Industry Financial Restructuring Program
17. Nova Scotia Swine Herd Health Policy
18. Nova Scotia Transportation Assistance
19. Ontario Farm Tax Reduction Program
20. Ontario (Northern) Livestock Programs
21. Prince Edward Island Hog Marketing and Transportation Subsidies

22. Prince Edward Island Swine Development Program
23. Prince Edward Island Interest Payments on Assembly Yard Loan
24. Quebec Special Credits for Hog Producers
25. Saskatchewan Financial Assistance for Livestock and Irrigation
26. Saskatchewan Livestock Investment Tax Credit
27. Saskatchewan Livestock Advance Program
28. Ontario Weaner Pig Stabilization Plan

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the National Pork Producers Council (NPPC), we held a public hearing on August 5, 1988. The NPPC, the Canadian Pork Council (CPC), and Quintaine & Sons Ltd., the major Canadian exporter of slaughter sows and boars, took part in the hearing.

Comment 1: The CPC points out that the Department misread the financial statement of the Farm Income Stabilization Commission ("FISC") of Ontario in calculating the benefit from the Ontario Weaner Pig Stabilization Plan.

Department's Position: We agree and have revised our calculations accordingly. We determine the benefit from this program to be Can$0.00000037/lb.

Comment 2: The CPC asks the Department to clarify its rationale for determining that the Agricultural Stabilization Act ("ASA"), the National Tripartite Red Meat Stabilization ("Tripartite") Program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program are limited to specific industries. The CPC also requests that the Department establish detailed criteria to explain further its specificity test by answering the following questions: If all major commodities in a jurisdiction were covered by stabilization programs, would these programs then be considered not countervailable? How is a major commodity defined? If all major commodities are covered by a stabilization or other program (*e.g.*, supply management) at the national or provincial level, should not the Department take this factor into account? On the other hand, if there are no clearly discernible major commodities in a jurisdiction, is it possible to pass the Department's specificity test if less than 100 percent of the commercial farm products are covered by a stabilization program? If so, how much less than 100 percent: 90, 80, 60, or 51 percent? How is coverage measured: by number of products, tonnage, or value?

Department's Position: As stated in our preliminary results, we continue to regard the subsidy programs referred to by the CPC as countervailable because they are provided to specific industries. Several aspects of the ASA have changed since our final determination (50 FR 25097, June 17, 1985). Furthermore, we received additional information on the Tripartite program, the British Columbia Farm Income Insurance Program, and the Quebec Farm Income Stabilization Insurance Program. However, we received no additional evidence that any of these programs are not still limited to specific industries. For example, with respect to the ASA, several major agricultural commodities, such as most wheat, dairy products, and poultry, are still ineligible for payments. Several major agricultural products are also excluded from the British Columbia Farm Income Insurance Program (*e.g.*, wheat, dairy products, and poultry) and the Quebec Farm Income Stabilization Insurance Program (*e.g.*, milk products, poultry, and eggs). Therefore, we determine that these four programs continue to be countervailable.

The request by the CPC that the Department establish detailed criteria to explain further its specificity test appears to be a request for an advisory opinion. We do not consider it appropriate to issue advisory opinions based upon hypothetical situations. Also, it is well established that the Department's specificity test cannot be reduced to a mathematical formula because domestic subsidy programs are seldom identical. The terms and conditions of domestic subsidy programs differ from case to case, as do the circumstances under which a specific program may be used. Thus, we cannot reduce our test for specificity to a single formula that would be applicable to every case, as CPC implicitly suggests we should. Instead, we must analyze each program on its own merits and weigh various factors before we can determine that a program is or is not provided, either *de jure* or *de facto*, to a specific enterprise or industry, or group of enterprises or industries.

Parties, however, are not without guidance. The determinations published by the Department provide a significant body of precedents by which a domestic subsidy program may be analyzed. Moreover, we routinely consider the following factors when we apply the specificity test: (1) The extent to which a foreign government acts to limit the availability of a program; (2) the number of enterprises, industries, or groups that actually use a program; (3) the dominant or disproportionate use of a program by certain enterprises, industries or groups; and (4) the extent to which the foreign government exercises discretion when it confers benefits under a program. *See, e.g., Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada* (51 FR 37453, October 22, 1986)).

Comment 3: The NPPC contends that the Department's preliminary determination that the Record of Performance Program (ROP) is not countervailable is based on errors of law and mistakes of fact. As long as the ROP is provided to a specific industry, the Department should find the program to be countervailable.

The NPPC claims that while the results of the ROP research are nominally available to any interested party, few, if any, parties other than the Canadian hog industry are interested in the results. Only the Canadian hog industry can benefit from the ROP research because the information generated is specifically tailored for the production practices and climatic conditions existing only in Canada. ROP data cannot be used by other industries in Canada or by the hog industry in the United States.

The NPPC argues that the Department's long-standing practice is to find research and development programs such as the ROP to be countervailable and, to support its assertion, cites Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, (1982); *Optic Liquid Level Sensing Systems from Canada*, 44 FR 1728, (1979); and *Certain Steel Products from France*, 47 FR 39332, (1982).

Department's Position: We disagree. In Appendix 2 to *Certain Steel Products from Belgium*, we determined that assistance provided by a foreign government to finance research and development does not confer a countervailable benefit if the research and development has broad application and yields results that are made available to the public.

In *Optic Liquid Level Sensing Systems from Canada*, we found that the research and development program provided selective treatment because the information generated was not publicly available and was only used to improve the respondent's ability to introduce a commercially successful product to market. In *Certain Steel Products from France*, we examined two research and development programs,

one publicly available and the other not. We found only the program whose research was not publicly available to be countervailable.

The NPPC submitted no information to support its claim that the availability and applicability of ROP research data are selective. The CPC, on the other hand, submitted in its rebuttal brief numerous examples of the broad application and public use outside of Canada of the research and development generated by the ROP. Among the documents submitted by the CPC are copies of scientific papers published outside Canada using ROP data; copies of papers on the results of Canadian ROP tests submitted to the National Swine Improvement Federation in St. Louis, Missouri; extensive mailing lists of recipients of ROP data, including recipients in the United States as well as other foreign countries; circulation lists of *Canadian Swine*, a Canadian industry magazine, that include many subscribers in the United States; and copies of *Canadian Swine* announcements of breeding stock sales—all with ROP data listed. The examples of the wide public use of this information supports our preliminary determination that the ROP research data are publicly available and applicable to hog producers all over the world, including those in the United States. For these reasons, we determine that the ROP program is not counteravailable.

Comment 4: The NPPC contends that the Department understated the benefit from all programs by weight-averaging benefits according to each province's proportion of total Canadian exports of live swine to the United States. The NPPC claims that weight-averaging by province rather than by producer is grossly distortive of market realities, wide open to circumvention, and improper as applied to this case. The Department should focus on the overall effect that the subsidies have on production and calculate one country-wide rate for all hogs by dividing the total amount of subsidies from all provinces by the total Canadian production of live swine. Geographic boundaries are meaningless to the production, flow and pricing of any commodity whose production is easily stimulated by government subsidies. Futhermore, weight-averaging by province creates strong incentives to circumvent or evade countervailing duties by transshipping hogs within Canada prior to exporting to the United States. The Newfoundland transshipments found by the Department in its preliminary results demonstrate that the threat of transshipment is valid.

Department's Position: We disagree. In this administrative review, as in the original countervailing duty investigation, we did not investigate individual producers, electing instead to focus on aggregate benefits provided by the federal and provincial governments to producers of live swine. We did this because of the large number of hog producers and the administrative burden imposed in analyzing and verifying numerous responses.

To calculate the subsidy, we divided, for each province, total benefits paid to hog producers in that province by total production in that province. We then weight-averaged these benefits by the provincial shares of total Canadian exports of the subject merchandise to the United States.

In our view, this method provides a better measure of the subsidy on exports to the United States than that proposed by the NPPC. This is because it gives greater weight to those provinces which ship more hogs to the United States and therefore more accurately reflects the level of subsidy on the subject merchandise.

The danger of transshipment is minimal because the same countervailing duty rate on live swine applies to all of Canada. We believe that the transshipment scenario described by the NPPC is too far removed from reality to pose any significant threat to the integrity of the countervailing duty law. As we stated in our preliminary results, the individual producer usually is not aware of the ultimate destination of his hogs. Furthermore, it is impossible for individual producers to predict which province will have the lowest benefit because the Department does not calculate provincial benefits until up to two years after the time of exportation. Finally, the Newfoundland transshipments do not support the NPPC's argument because they were made at a time that the cash deposit rate was calculated in the manner that the NPPC is now advocating.

Comment 5: The NPPC states that, although it does not challenge the Department's creation of a subclass or kind of merchandise for sows and boars, the Department should announce strict definitions of sows, boars, and slaughter hogs in order to prevent circumvention of the order by masquerading bona fide slaughter hogs as sows and boars. Quintaine opposes NPPC's request for strict definitions as unnecessary because industry standards determine the weight of sows and boars and because sows and boars are sold and shipped separately, command different prices, and have different markets.

Department's Position: We disagree with the NPPC and agree with Quintaine. In our preliminary results of review, we found that sows and boars are distinguishable from other live swine not only by their physical characteristics, but also by their ultimate use, markets and prices. Further, there is no financial incentive to sell slaughter hogs at the much lower price commanded by sows and boars.

Comment 6: The NPPC disputes the Department's estimate that sows and boars represent only one percent of Canadian production of live swine. The NPPC claims that the figure should be at least four percent, which is the approximate proportion of sows and boars to all live swine produced in the United States.

Department's Position: We agree that the one-percent figure underestimates the production of sows and boars in Canada. We requested more precise information from Canada. The CPC submitted a hog cost model developed by the Market Outlook and Analysis Division, Policy Branch, Agriculture Canada. The hog cost model was developed after the passage of the 1985 amendment to the ASA and is used for calculating the benefits from the Tripartite swine program. The model is a national average of provincial/regional costs of production of hogs. The model, which is updated yearly, was designed to reflect current industry structure and production practices. The model estimates that the proportion of sows and boars to total live swine production in Canada is 2.1 percent. We believe that this is the most accurate estimate available.

Adjusting for this change, we have recalculated the benefits from the various programs to be:

	Pound
1. Agricultural Stabilization Act	$0.00075876
2. Record of Performance Program	00000000
3. Canada-Ontario Stabilization Plan for Hog Producers 1985	01249583
4. Alberta Red Meat Interim Insurance	00322447
5. Saskatchewan Hog Assured Returns	00246900
6. British Columbia Farm Income Insurance Plan	00033610
7. Manitoba Hog Income Stabilization Plan	00130644
8. New Brunswick Hog Price Stabilization Plan	00000134
9. Newfoundland Hog Price Support Program	00002401
10. Nova Scotia Pork Price Stabilization Program	00002521
11. Prince Edward Island Price Stabilization Program	00003519

	Pound
12. Quebec Farm Income Stabilization Insurance Programs	00073368
13. New Brunswick Swine Assistance Program	00000003
14. New Brunswick Livestock Incentives Program	00000249
15. New Brunswick Hog Marketing Program	00000019
16. New Brunswick Swine Industry Financial Restructuring Program	00000151
17. Nova Scotia Swine Herd Health Policy	00000312
18. Nova Scotia Transportation Assistance	00000000
19. Ontario Farm Tax Reduction Program	00003182
20. Ontario (Northern) Livestock Programs	00001269
21. Prince Edward Island Hog Marketing and Transportation Subsidies	00000041
22. Prince Edward Island Swine Development Program	00002141
23. Prince Edward Island Interest Payments on Assembly Yard Loan	00000002
24. Quebec Special Credits for Hog Producers	00000000
25. Saskatchewan Financial Assistance for Livestock and Irrigation	00000000
26. Saskatchewan Livestock Investment Tax Credit	00008396
27. Saskatchewan Livestock Stock Advance Program	00000000
28. Ontario Weaner Pig Stabilization Plan (FISC)	00000037
Total benefits from all programs	.022

Final Results of Review

After considering all of the comments received, we determine the net subsidy to be Can$0.00011/lb. for slaughter sows and boars and Can$0.022/lb. for all other live swine for the period April 3, 1985 through March 31, 1986. The rate for slaughter sows and boars is equivalent to 0.30 percent *ad valorem*. The Department considers any rate less than 0.5 percent to be *de minimis* in accordance with 19 CFR 355.8.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of slaughter sows and boars, and to assess coutnervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after April 3, 1985 and exported on or before March 31, 1986.

As provided by section 751(a)(1) of the Tariff Act, the Department also will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of slaughter sows and boars and to collect cash deposits of estimated countervailing duties of Can$0.022/lb. on shipments of all other live swine entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver and deposit requirement will remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Joseph A. Septrini,

Acting Assistant Secretary for Import Administration.

Dated: December 30, 1988.

[FR Doc. 89-377 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-223-401]

Portland Hydraulic Cement From Costa Rica; Preliminary Results of Countervailing Duty Administrative Review and Tentative Determination To Cancel Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and tentative determination to cancel suspension agreement.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on portland hydraulic cement from Costa Rica. The review covers the period October 1, 1985 through September 30, 1986.

As a result of the review, the Department has preliminarily determined that Industria Nacional de Cementos, S.A., a Costa Rican exporter of portland hydraulic cement to the United States and the sole signatory to the suspension agreement, did not account for 85 percent of the subject merchandise imported into the United States from Costa Rica during the review period.

A second firm, Cementos del Pacifico, S.A., accounted for all imports of the subject merchandise during the review period. This firm did not choose to enter into an agreement with the Department and, accordingly, the Department has tentatively determined to cancel the suspension agreement.

EFFECTIVE DATE: January 9, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul J. McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3337.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 47280) notice of an agreement suspending the countervailing duty investigation regarding portland hydraulic cement from Costa Rica. The Department stated that the suspension agreement reached with Industria Nacional de Cementos, S.A., ("INCSA") and the Department met the criteria of sections 704(b) and (d) of the Tariff Act of 1930 ("the Tariff Act"). We received no request to continue the investigation.

In March 1986, Cementos del Pacifico, S.A. ("CPSA"), also a Costa Rican producer of portland hydraulic cement, began exporting the subject merchandise to the United States.

On December 29, 1986, the petitioners, the Puerto Rican Cement Co., Inc., and the San Juan Cement Co., Inc., requested in accordance with § 355.10 of the Commerce Regulations an administrative review of this suspension agreement. We published the initiation on January 20, 1987 (52 FR 2123). The Department has now conducted that review in accordance with section 751 of the Tariff Act.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. We will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate Harmonized Tariff Schedule ("HTS") item numbers with our product descriptions. As with the TSUSA, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HTS 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 Tariff Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of Costa Rican portland hydraulic cement. Such merchandise is currently classifiable under TSUSA item number 511.1440 and under HTS item

number 2523.29.00. We invite comments from all interested parties on this HTS classification.

The review covers the period October 1, 1985 through September 30, 1986 and two firms, INCSA and CPSA.

Compliance With the Agreement

In the suspension agreement, INCSA renounced all existing bounties or grants which would benefit exports of portland hydraulic cement to the United States, and agreed not to apply for or receive substitute or equivalent benefits. In accordance with section 704(b) of the Tariff Act and § 355.31(c) of the Commerce Regulations, the suspension of the investigation can remain in effect only so long as 85 percent of imports of the subject merchandise into the United States are covered by the suspension agreement. INCSA did not export the subject merchandise to the United States during the period of review and, accordingly, did not account for the mandated 85 percent of U.S. imports of portland hydraulic cement from Costa Rica during the period.

A second firm, CPSA, also a Costa Rican producer of portland hydraulic cement, accounted for 100 percent of U.S. imports of portland hydraulic cement from Costa Rica during the review period. In its questionnaire response, CPSA stated that it had not been aware of the suspension agreement in effect respecting this merchandise and indicated that it would not export the subject merchandise to the United States in the future. However, CPSA chose not to enter into a suspension agreement with the Department.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the suspension agreement no longer meets the requirements of sections 704 (b) and (d) of the Tariff Act. We therefore tentatively determine to cancel the suspension agreement. Section 704(b) of the Tariff Act requires that manufacturers accounting for "substantially all" U.S. imports of merchandise subject of a suspended investigation be signatories to an agreement to eliminate or offset completely the total amount of any bounty or grant determined to exist. Section 355.31(c) of the Commerce Regulations defines "substantially all" as 85 percent of total U.S. imports.

If the Department determines as a result of this review that the suspension agreement should be cancelled, we will resume the investigation as if the affirmative preliminary determination had been published on the date of publication of the final results, and will instruct the Customs Service to suspend liquidation on all shipments of portland hydraulic cement exported directly or indirectly to the United States from Costa Rica and entered, or withdrawn from warehouse, for consumption on or after the 90th day prior to publication of the notice of suspension of liquidation (*i.e.*, the notice of cancellation of suspension agreement). The Department will also instruct the Customs Service, in accordance with section 703 of the Tariff Act, to require a cash deposit or bond for each such entry of the merchandise in the amount of 15 percent *ad valorem*, the rate found in our preliminary affirmative countervailing duty determination.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days from the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.10.

Date: December 30, 1988.

Jan W. Mares,

Assistant Secretary for Import Administration.

FR Doc. 89-378 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Cold-Rolled Sheet; Request for Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to certain aluminum-killed cold-rolled steel sheet.

DATE: Comments must be submitted on or before January 19, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " * * * determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category * * *."

We have received a short-supply request for certain aluminum-killed cold-rolled sheet, in coils, conforming to AISI standard C 1001, to be used in the manufacture of aperture masks for color television picture tubes and video monitors. The steel is 381-762 mm in width, 0.0762-0.3049 mm in thickness, and in coils weighing from 1,500 to 3,000 kgs.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than January 19, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments on this request in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

December 29, 1988.

[FR Doc. 89-309 Filed 1-6-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

Agency: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting on January 11, 1989, at 10 a.m., at the Howard Johnson's Hotel, Route 1, Danvers, MA, to discuss reports from the Groundfish and Scallop Committees, amendments to the Magnuson Fishery Conservation and Management Act, a Mid-Atlantic Fishery Management Council proposal concerning shark data collection, and implementation of the Marine Mammal Protection Act. The public meeting will recess at approximately 5 p.m., reconvene on January 12 at 9 a.m., and will adjourn when agenda items are completed.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Date: January 4, 1989.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc 89–394 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

Endangered Marine Mammals: Application for Permit; LGL Limited, Environmental Research Associates (P273E)

Notice is hereby given that the Applicant has applied in due form for a Permit to take endangered marine mammals as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217–222), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant. LGL Limited, Environmental Research Associates, 22 Fisher Street, P.O. Box 280, King City, Ontario, Canada LOG 1KO.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Bowhead whales (*Balaena mysticetus*)—800; White whales (*Delphinapterus leucas*)—600.

4. Type of Take: Harassment by aerial photography, helicopter overflight, and sound projection to study effects of oil production activities on arctic whales.

5. Location and Duration of Activity: Alaskan Beaufort Sea; May 1989.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910, within 30 days of the pulication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the Naitonal Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Room 7330, Silver Spring, Maryland 20910; and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Date: December 20, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89–336 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Application for Permit; Ouwehands Dierenpark bv (P435)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Ouwehands Dierenpark bv, Postbus 9, 3910 AA Rhenen, Netherlands.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*).

4. Type of Take: Capture and maintain for public display at the Ouwehands Zoo in Rhenen, the Netherlands.

5. Location and Duration of Activity: Gulf of Mexico between Mobile Bay and the Mississippi River. Dolphins to be collected, acclimated and transported by a National Marine Fisheries Service designated Collector of Record. Duration of activity is no more than one year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Hwy., Rm. 7330, Silver Spring, Maryland 20910; and Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: December 28, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc 89–337 Filed 1–6–89; 8:45 am]

BILLING CODE 3510–22–M

THE COMMISSION OF FINE ARTS

1989 National Capital Arts and Cultural Affairs Program

Notice is hereby given that Pub. L. 99–190, as amended, authorizing the National Capital Arts and Cultural Affairs Program, has been funded by the Congress for 1989 in the amount of $5,000,000. All requests for information and applications for grants should be

addressed to: Charles H. Atherton, Secretary, Commission of Fine Arts, 708 Jackson Place, NW., Washington, DC 20006.

Phone: 202–566–1066.

Deadlines for receipt of submission of grants applications is 3 March 1989.

This program provides grants for general operating support of organizations whose *primary* purpose is performing, exhibiting, and/or presenting the arts. To be eligible for these grants, organizations must be located in the District of Columbia, must be not-for-profit, non-academic institutions of demonstrated national repute, and must have annual income, exclusive of federal funds, in excess of one million dollars for the current year and for the past three years.

Charles H. Atherton,

Secretary.

[FR Doc. 89–328 Filed 1–6–89; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract; Morgan Stanley Capital International United Kingdom Stock Index

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 January 24, 1989.

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, September 2, and November 4, 1988, the Commission published in the **Federal Register,** for 60-day, 15-day, and 15-day comment periods, respectively, notices of availability of the CME's proposed terms and conditions for the U.K. stock index futures contract (53 FR 17969, 53 FR 34140 and 53 FR 44646). In a December 29, 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 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. Request 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 January 4, 1989.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 89–358 Filed 1–6–89; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meetings; Defense Manufacturing Board

AGENCY: Under Secretary of Defense (Acquisition), DOD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a forthcoming meeting of the Defense Manufacturing Board (DMB).

DATE AND TIME: 18 January 1989, 0830–1700.

ADDRESS: Pointe at South Mountain, 7777 South Pointe Parkway, Phoenix, AZ 85044.

The agenda for the meeting will focus on concurrent engineering and total quality management.

FOR FURTHER INFORMATION CONTACT: Mrs. Sherry Fitzpatrick of the DMB Secretariat, (703) 756–2310.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 3, 1989.

[FR Doc. 89–335 Filed 1–6–89; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted To OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Children's Dependency Statement; AF Form 472; and OMB Control Number 0701–0110.

Type of Request: Extension.

Average Burden Hours/Minutes Per Response: 1 hour.

Frequency of Response: On occasion.

Number of Respondents: 7,182.

Annual Burden Hours: 3,950.

Annual Responses: 7,182.

Needs and Uses: Individuals applying for monetary allowances and other benefits for the dependent children of service members, retired service members, or surviving spouses need this form to document their relationship and dependency. Air Force claim examiners

use the information on the form to determine whether the claim is valid and the individual is entitled to benefits.

Affected Public: Individuals.

Frequency: Continuing.

Respondent's 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.

January 3, 1989.

[FR Doc. 89–334 Filed 1–6–89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Stafford Loan Program, SLS Program, PLUS Program and Consolidation Loan Program; Special Allowance; Correction

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending September 30, 1988; correction.

On November 2, 1988, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (53 FR 44220), a special allowance for the quarter ending September 30, 1988 to holders of eligible loans made under the Stafford Loan Program (formerly the Guaranteed Student Loan Program), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This document corrects a typographical error that was made in that notice as follows: In the table under Item III., in the line for applicable interest rate of 9%, "0.8725" in column three is corrected to read "0.3725".

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Program Analyst, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, Washington, DC 20202. Telephone (202) 732–4242.

Dated: December 13, 1988.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Kenneth D. Whitehead,

Assistant Secretary for Postsecondary Education.

[FR Doc. 89–387 Filed 1–6–89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Climate Institute of Washington, DC

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: In accordance with 10 CFR 600.7, eligibility for award of a grant, resulting from Procurement Request No. 01–89EH89009.000, will be restricted to the Climate Institute of Washington, DC. The DOE is conducting negotiations with the Climate Institute for the support of post conference costs of the "Second North American Conference on Preparing for Climate Change." These negotiations are expected to result in the issuance of Grant Number DE–FG01–89EH89009 in which the DOE is anticipated to provide $20,000 of the total estimated post conference costs of $30,592, for a performance period of twelve months, estimated to begin January 25, 1989..

Project Scope: The grant will provide post conference assistance for one conference entitled, "Second North American Conference on Preparing for Climate Change," that will provide for the furtherance of international information exchange and cooperation to adapt to, and mitigate the effects of global climate changes in the North American region. The proposed grantee, the Climate Institute, has already conducted the conference and would expend these post conference costs in the absence of funding by the DOE, however DOE support of the conference would enhance the public benefits to be derived by providing timely, credible and relevant information that would support education, policy development and other decision making by federal, state and local governments; and DOE knows of no other entity which has conducted or is planning to conduct such a conference.

FOR FURTHER INFORMATION CONTACT: Stanley T. Colt, MA–453.1, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1424.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–389 Filed 1–6–89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Intent To Award a Grant to the Texas Bureau of Economic Geology

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19–89BC14403.000 to the Texas Bureau of Economic Geology for "Characterization of Oil and Gas Reservoir heterogeneity in San Andres and Grayburg Reservoirs of West Texas".

Scope: The grant is to fund research to increase our understanding of geological heterogeneities that affect the recovery of oil and gas from specific reservoirs, and to develop strategies for exploiting these resources. The specific reservoirs to be examined are the San Andres and Grayburg oil and gas reservoirs in the Permian Basin. The objective of the project is to increase the understanding of the geological variability that affects the recoveries of oil and gas by studying carbonate sandbar trends in a group of reservoirs that contain large volumes of unproduced hydrocarbons. The project will include mapping the distribution of various facies, developing geostatistical models of the reservoirs and developing strategies for geologically targeted infill drilling and selective recompletion that will allow increased economic production and reserve growth.

In accordance with 10 CFR 600.7(b)(2)(i) (B) and (D), the Texas Bureau of Economic Geology has been selected as the grant recipient. The proposed recipient has conducted a series of volumes describing and cataloging characteristics of some of the states' oil and gas fields, which are necessary predecessors to this characterization project. The state has now indicated a commitment to fund this project, DOE support will allow more thorough coverage of the state's reservoirs than would be otherwise possible. Furthermore the Texas Bureau of Economic Geology is considered uniquely qualified based upon experience derived from similar studies and their repository of geological

samples and well data. In 1983, the Texas Bureau of Economic Geology completed an atlas of Texas oil reservoirs and is currently compiling a similar atlas. Thsee studies form a unique basis for evaluating reservoir heterogeneity and applying that information to a large group of related reservoirs.

The term of the proposed grant is for a three year period at a total estimated value of $1,520,000.00 to be shared equally between DOE and the State of Texas.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: David N. Barnett, Telephone: AC412/892–5912.

Date: December 21, 1988.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89–391 Filed 1–6–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the University of Texas at Austin

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for a grant under procurement request number 19–89BC14251.000 to the University of Texas at Austin for "Reservoir Characterization and Enhanced Oil Recovery Research."

Scope: The grant is to fund the development of an integrated package of (1) Systematic Procedure for Reservoir Characterization, (2) Modeling and Scaleup of Chemical Flooding, and, (3) CO_2-Surfactant Phase Behavior. The integrated program is aimed at improving oil recovery from reservoirs in the State of Texas. The first part of the project will be to create numerical simulation models. The models will account for both 'continuity' and "cross-bedding' of reservoirs, the quantification of existing taxonomy through the use of correlation, fractal representation and nonlinear dynamic statistical procedures. The use of geochemical flow patterns in porosity and permeability that result in diagenetic process; and, to define the patterns on permeability in carbonate formations and the occurrence of calcite cement inclusion caused by both bacterial and/or thermochemical processes. The second part of the project will address the overall goal of modeling and scaleup of chemical flooding focusing on polymer gels for profile modification and chemical tracers. Measure the in-situ behavior of gels formed while flowing in permeable media. Simulate the hydrodynamic instabilities in permeable media. The third part involves a study of CO_2-surfactant-water interactions as a means of developing a thermodynamic model to predict conditions of precipitation and the chemical potential of surfactants in aqueous solutions. A study of oil-CO_2-water-surfactant interactions to develop theoretical models that relate to the phase behavior of the particular system considered, and to assure that a certain surfactant will function properly over a wide range of reservoir conditions. A study of the stability of thin aqueous films on solid surfaces directed toward a study of phase behavior, adsorption, and partitioning of mixed surfactant systems composed of monoisomeric nonionic and monoisomeric anionic surfactant molecules.

In accordance with 10 CFR 600.7(b)(2)(i)(B), the University of Texas at Austin has been selected as the grant recipient. The University is currently undertaking the project by the use of funds derived from the State of Texas and industrial support. It is determined that DOE support of the activity would enhance the public benefits to be derived. The term of the grant will be for a two year period in the amount of $1,920,000.00, the amount to be shared equally between the DOE and the State of Texas.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236 Attn: David N. Barnett, Telephone: AC412/892–5912.

Dated: December 21, 1988.

Gregory J. Kawalkin,

Director, Acquisition and Assistance Division (Acting).

[FR Doc. 89–392 Filed 1–6–89; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety; Open and Closed Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date and Time: Tuesday, January 24, 1989, 8:30 a.m. to 6:30 p.m. Wednesday, January 25, 1989, 9:00 a.m. to 2:00 p.m.

Place: U.S. Department of Energy, Forrestal Building, Room 8E 089, 1000 Independence Avenue, SW, Washington, DC 20585.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586–1770.

Purpose of the Meeting: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda.

January 24, 1989

8:30–Noon: Presentations and Discussions on Savannah River Plant Issues

Noon–1:00: Break

1:00–6:00: Presentations on Selected Reactor and Facility Issues

6:00–6:30: Public Comment

January 25, 1989

9:00–12:00: Discussion of Selected Issues and Committee Business

12:00–1:00: Lunch

1:00–2:00: Closed Meeting

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (U.S.C. App. II (1982)), part of these advisory committee meetings concerns matters listed in 5 U.S.C. 552b(c)(1) and that accordingly on January 25, 1989 at approximately 1:00 p.m. the meeting will be closed to the public.

Public Participation: Except as indicated, the meeting is open to the public. Written statement may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the addres or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the unclassified part of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington DC, on January 5, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-499 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 88-54-NG]

Hadson Gas Systems, Inc; Order Extending Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order extending blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order extending Hadson Gas Systems, Inc. (Hadson), blanket authorization to import natural gas from Canada. The order issued in ERA docket No. 88-65-NG authorizes Hadson to import up to 50 Bcf of Canadian natural gas over a two-year term beginning March 3, 1989.

A copy of this order is available in the Natural Gas Division Docket Room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 27, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 89-390 Filed 1-6-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP89-267-000]

Atlantic Richfield Co. and Intalco Aluminum Co.; Extension of Time

December 29, 1988

On December 27, 1988, BP Oil Company (BP) filed a motion for an extension of time to file a motion to intervene or protest in response to the Commission's Notice of Application issued December 13, 1988, in the above-docketed proceeding. In its motion, BP states that because of the press of other business and the intervening holidays, the company requires additional time to study this matter and prepare its filling.

Upon consideration, notice is hereby given that an extension of time for the filing of motions to intervene and protests is granted to and including January 13, 1989.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-327 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP89-23-000]

Phillips 66 Natural Gas Co. et al.; Complaint and Petition for Emergency Relief

January 4, 1989.

Take notice that on December 15, 1988, Phillips 66 Natural Gas Company and Phillips Petroleum Company (Phillips) filed a complaint against ANR Pipeline Company (ANR) contending that ANR refuses to provide transportation on an open access, non-discriminatory basis for gas owned by Phillips for which Phillips has released ANR from take-or-pay obligations under Order Nos. 451 and 490 series. (*See* FERC Statutes and Regulations, ¶¶ 30,701, 30,720, 30,748 and 30,797, 30,804, 30,831 and 30,825 respectively.)

Phillips requests that the Commission issued an order requiring ANR to file and operate under tariff provisions which eliminate its policy of offering a higher priority to shippers of gas for which ANR receives take-or-pay relief. Additionally, Phillips requests that the Commission direct ANR to immediately begin offering interruptible transportation on a first-come, first-served basis. In the alternative, Phillips requests emergency clarification that its production qualifies as "released" gas for purposes of ANR's tariff.

Any person desiring to be heard or to make any protest concerning Phillips' request should file an answer under Rule 213, 18 CFR 385.213 (1988), or a protest or petition to intervene in accordance with the requirements of Rules 211 or 214 of the Commission's rules of practice and procedure (18 CFR 385.211 or 385.214). All such filings should be made not later that 15 days following publication of this notice in the **Federal Register** and should be addressed to Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

Protests will be considered by the Commission in determining the action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with Rule 214.

Lois D. Cashell,

Secretary.

[FR Doc. 89-385 Filed 1-6-89; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Boulder Canyon Project Proposed Power Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of extension of consultation and comment period for a proposed power rate adjustment.

SUMMARY: The Western Area Power Administration (Western) announced in the **Federal Register** published June 22, 1988 (53 FR 23446), a proposed adjustment of the rates for power and energy from the Boulder Canyon Project (BCP). In that notice, Western scheduled a public information forum for June 30, 1988, with the consultation and comment period to end August 8, 1988. Western also stated that consideration would be given to an extension of the consultation and comment period if requested by customers or interested parties.

Western received several requests for an extension of 45 days to the originally published consultation and comment period. The basis for the extension was to allow all interested parties an opportunity to review and analyze a new energy forecast, a new method of forecasting future replacement requirements, and new rate calculations.

After reviewing those requests for extension, Western concurred with the requests and rescheduled for September 7, 1988, the public comment forum previously scheduled for July 22, 1988. In addition, the ending date of the consultation and comment period was changed to September 22, 1988. This was noticed in the **Federal Register** at 53 FR 29085, August 2, 1988.

An additional public comment forum was scheduled (53 FR 38779, October 3, 1988) for October 28, 1988, and the end of the consultation and comment period extended to November 14, 1988.

Due to the need for further data input and analysis, the October 28, 1988, public comment forum was canceled by written notification to the BCP customers and interested parties and was rescheduled (53 FR 48584, December 1, 1988) for December 15, 1988. Also, the consultation and comment period was extended to December 30, 1988.

Several customers requested another extension of the consultation and comment period in order to have sufficient time for detailed analysis of the proposed rates. Western recognizes the appropriateness of such extension and therefore is extending the consultation and comment period.

DATES: The consultation and comment period which began with the notification of the BCP rate adjustment (53 FR 23446, June 22, 1988) will end January 31, 1989, on which date written comments should be received at the address indicated below.

ADDRESSES: Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

FOR FURTHER INFORMATION CONTACT: Mr. Earl W. Hodge, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255.

Issued at Golden, Colorado, December 23, 1988.

William H. Clagett,

Administrator.

[FR Doc. 89–393 Filed 1–6–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3503–1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Application for Reference or Equivalent Method Determination (EPA ICR #0559; OMB #2080–0005). This is a renewal of a currently approved collection.

Abstract: State and local air monitoring agencies are required to use EPA approved (i.e., reference or equivalent) methods in their air monitoring networks. Manufacturers of commercial air monitoring analyzers (or similar products) may request EPA approval of alternative air monitoring methods by submitting an application containing test data and other information indicating that the method meets performance and other requirements specified in 40 CFR Part 53.

Burden statement: The estimated average public reporting and recordkeeping burden for this collection of information is 100 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

Respondents: Manufacturers of Air Monitoring Analyzers or User Agencies.

Estimated no. of respondents: 8.

Estimated total annual burden on respondents: 800 hours.

Frequency of collection: 1 response per year.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460; and Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503; (Telephone (202) 395–3084).

OMB Respondents to Agency PRA Clearance Requests

EPA ICR #0939; National Human Adipose Tissue Survey; was approved 11/1/88; OMB #2070–0050; expires 11/30/91.

EPC ICR #0801; Uniform Hazardous Waste Manifest For Generators, Transporters, and Disposal Facilities; was approved 11/1/88; OMB #2050–0039; expires 9/30/91.

EPA ICR #0152; Notice of Arrival of Pesticides or Devices; was approved 11/2/88; OMB #2070–0020; expires 11/30/91.

EPA ICR #0270.12; Public Water System Program Information; was disapproved 10/28/88; OMB #2040–0090. (Proposed Rule)

Date: December 21, 1988.

Paul Lapsley,

Information and Regulatory Systems Division.

[FR Doc. 89–305 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL 3503–5]

Municipal Settlement Discussion Group

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Agency is developing a Municipal Settlement Policy to address issues related to notifying and bringing municipalities that are responsible parties into the Superfund settlement process. In order to provide a public forum for interested parties to provide input into how municipalities should fit in the settlement process, the Agency has formed a Municipal Settlement Discussion Group. The discussion group is not designed to promote consensus on the Municipal Settlement Policy, nor to advise the Agency on policy directions. The group consists of approximately 24 members representing EPA, States, local governments, industry, business, and environmental concerns. The group's third meeting was held on October 20, 1988 in Washington, DC. Copies of the minutes from that meeting are available upon request.

FOR FURTHER INFORMATION CONTACT: Kathleen MacKinnon of the Environmental Protection Agency, Office of Waste Programs Enforcement (WH–527), Washington, DC 20460; telephone 202/475–9812.

Lloyd S. Guerci,

Director, CERCLA Enforcement Division.

[FR Doc. 89–306 Filed 1–6–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each

agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–001953–006.

Title

City of Oakland Terminal Agreement.

Parties:

City of Oakland.

Matson Terminals, Inc. (Matson).

Synopsis:

Agreement No. 224–001953–006 amends the parties basic agreement which provides for the lease of certain terminal property and berthing areas at the Port of Oakland, California. On July 21, 1988, the above designated lease was extended for 20 years beyond December 31, 1988. The amendment to the Agreement permits Matson to continue paying the rent specified under the basic agreement until the rent for the extended term has been negotiated.

Agreement No.: 224–001953–A–001.

Title:

City of Oakland Terminal Agreement.

Parties:

City of Oakland.

Matson Terminals, Inc. (Matson).

Synopsis:

Agreement No. 224–001953–A–1 amends the parties basic agreement which provides for the lease of certain terminal property for a freight station. On July 21, 1988, the above designated lease was extended for 20 years beyond December 31, 1988. The amendment to the Agreement permits Matson to continue paying the rent specified under the basic agreement until the rent for the extended term has been negotiated.

By Order of the Federal Maritime Commission.

Dated: January 4, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–315 Filed 1–6–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/12/88 AND 12/23/88

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
BBA Group PLC, Jerry Zucker, The InterTech Group, Inc	89-0270	12/12/88
The Coleman Co., Inc., Jonathan Hershberg, Faulkner Manufacturing Co	89-0321	12/12/88
Warburg, Pincus Capital Co., L.P., Westward Communications Public Limited Co., Lee International Limited	89-0348	12/12/88
Cencom Cable Associates, Inc., First Carolina Cable TV, L.P., First Carolina Holdings, Inc and certain assets of FCC	89-0445	12/12/88
Cencom Cable Income Partners II, L.P., First Carolina Cable TV, L.P. of four subsidiaries	89-0446	12/12/88
Cencom Cable Associates, Inc., Wizard Cable Associates I, L.P., Wizard Cable Associates I, L.P.	89-0447	12/12/88
Patrick G. Ryan, Ampco-Pittsburgh Corp., Ampco Metal Division	89-0503	12/12/88
Cookson Group plc, Leach & Garner Co., Precision Metallurgical Corp.	89-0413	12/13/88
Charles J. Urstadt, HRE Properties, HRE Properties	89-0442	12/13/88
C. Itoh & Co., Ltd., Primark Corp., Telerent Leasing Corp	89-0462	12/13/88
Laidlaw Transportation Limited, Edward Hanenburg Trust, Ottawa County Farms, Inc	89-0488	12/13/88
Torchmark Corp., Kansas City Life Insurance Co., Kansas City Life Insurance Co.	89-0553	12/13/88
Diamond Shamrock R&M, Inc., "Investing in Success" Equities, PLC, Newco	89-0580	12/13/88
Marshall S. Cogan, James W. Hart, Reeves Brothers, Inc	89-0407	12/14/88
Superfos a/s, Will H. Shears, Jr., J.H. Shears' Sons, Inc	89-0487	12/14/88
The Bear Stearns Companies, Inc., Charles H. Dyson and Margaret M. Dyson, The Dyson-Kissner-Moran Corp	89-0515	12/14/88
Mr. Uwe Holy, TJFC, Inc., TJFC, Inc	89-0533	12/14/88
Mr. Jochen Holy, TJFC, Inc., TJFC, Inc	89-0534	12/14/88
The Litchfield Co. of South Carolina Ltd. Partnership, USX Corp., Litchfield-By-The-Sea, Joint Venture	89-0557	12/14/88
Alcan Aluminium Limited, Lanxide Corp., Lanxide Corp	89-0563	12/14/88
H.F. Holdings, Inc., CityFed Financial Corp., CityFed Financial Corp	89-0574	12/14/88
H. Philip Handy, The Coca-Cola Co., The Coca-Cola Co	89-0578	12/14/88
The McConnel Family Trust, Florida Progress Corp., Crown Industries, Inc	89-0598	12/14/88
Apache Corp., Citizens Energy Corp., Citizens Corp	89-0622	12/14/88
Equiticorp International, plc, John C. Cameron, Trustee, Choctaw Industries, Inc	89-0062	12/15/88
Tate & Lyle plc, Amstar Corp., Amstar Sugar Corp. & 2 other subs of Amstar	89-0213	12/15/88
Jannock Limited, Tate & Lyle plc, Refined Sugars Inc	89-0395	12/15/88
Steinberg Inc., Tate & Lyle plc, Refined Sugars Inc	89-0396	12/15/88
BTR plc, Equiticorp International plc, a U.K. corporation, Feltrax International Limite	89-0472	12/15/88
Donald J. Trump, Texas Air Corp., Eastern Air Lines, Inc	89-0489	12/15/88
Outboard Marine Corp., Donzi Marine Corp., Donzi Marine Corp	89-0493	12/15/88
Warburg, Pincus Capital Co., L.P., Grey Advertising Inc., LBS Communications, Inc	89-0569	12/15/88
Exxon Corp., Mobil Corp., Mobil Corp	89-0588	12/15/88
E. I. du Pont de Nemours and Co., Total Compagnie Francaise des Petroles, Total Petroleum, Inc	89-0659	12/15/88
Norman J. Pattiz, Outlet Communications, Inc., Outlet Broadcasting, Inc	89-0464	12/16/88
Mohamed Hadid, Southmark Corp., North American Mortgage Investors	89-0516	12/16/88
Yoshihiro Kamon, Louis G. Reese, III, Reese	89-0520	12/16/88
Nelson Peltz & Peter May, Pechiney, Triangle Industries, Inc	89-0540	12/16/88
Warburg, Pincus Capital Partners, L.P., Crownx, Inc., U.S. Administrators Inc	89-0573	12/16/88
Gerald L. Wolken, Medicare-Glaser Corp., Medicare-Glaser Corp	89-0579	12/16/88
Krupp Cash Plus-IV Limited Partnership, Harold S. Wenal, Valley Assocaites, Ltd	89-0590	12/16/88

Transactions Granted Early Termination Between: 12/12/88 AND 12/23/88—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Peabody Holding Co., Inc., Panhandle Eastern Corp., Panhandle Eastern Corp	89-0616	12/16/88
Prudential-Bache Energy Income Ltd. Partnership VP-22, Broken Hill Proprietary Co. Limited, BHP Petroleum (Americas) Inc. et al	89-0618	12/16/88
Mr. Jiro Matsushima, Crico Hotel Associates I, L. P., Crico Hotel Associates I, L. P	89-0619	12/16/88
Philips N.V., Teleklew Productions, Inc., Welk Music Group	89-0621	12/16/88
CIGNA Corp., Worcester Center Associates, Worcester Center Associates	89-0623	12/16/88
Continental Information Systems Corp., Transamerica Corp., BWAC Sub Two, Inc., BWAC Sub Six, Inc. & BWAC Sub 7, Inc	89-0624	12/16/88
Exxon Corp., Mobil Corp., Mobil Corp	89-0625	12/16/88
London United Investments PLC, CalFed Inc., CalFed Insurance Syndicate, Inc	89-0626	12/16/88
The Rouse Co., Midwest Malls Limited Partnership, Midwest Malls Limited Partnership	89-639	12/16/88
Ralph J. Roberts, Tele-Communications, Inc., SCI Holdings, Inc	89-0641	12/16/88
Westinghouse Electric Corp., Continental Information Systems Corp., BWAC Sub Two, Inc., BWAC Sub Six, Inc., BWAC Sub 7, Inc	89-0645	12/16/88
General Electric Co., Chemical Banking Corp., Chemical Banking Corp	89-0654	12/16/88
Harken Oil & Gas, Inc., Entrad Corp., AFEX, Inc	89-0655	12/16/88
Shoyi Kanazawa, Sports Arena Boulevard, Inc., Sports Arena Boulevard, Inc	89-0658	12/16/88
Carlyle Real Estate Limited Partnership-XVI, Ernest W. Hahn, Palm Desert Town Center Associates	89-0661	12/16/88
Club Corp. International, Freeport-McMoRan Inc., Barton Creek Properties, Inc	89-0685	12/16/88
S. & W. Berisford PLC, Universal Foods Corp., Universal Foods Corp	89-0605	12/17/88
Fred Giorgi, The Myers Canning Corp., The Myers Canning Corp	89-0378	12/19/88
Masco Industries, Inc., Kelso ASI Partners, L.P., American Standard, Inc	89-0482	12/19/88
Lone Star Industries, Inc., Tarmac PLC, Tarmac-America Inc	89-0508	12/19/88
Fuji Photo Film Co., Ltd., Olin Corp., Olin Hunt Sub II Corp. plus assets of UPE	89-0517	12/19/88
Amos B. Hostetter, Jr., Continental Cablevision, Inc., Continental Cablevision, Inc	89-0562	12/19/88
Floyd Hall, James M. Goldsmith, G.U. Acquisition Corp	89-0585	12/19/88
Cincinnati Bell Inc., Seldon O. Young, NICE Corp	89-0596	12/19/88
Cincinnati Bell Inc., Jered F. Brown, NICE Corp	89-0597	12/19/88
DeMuth, Folger & Terhume, ADT Limited, ADT Communications Systems, Inc	89-0676	12/19/88
General Electric Co., FGIC Corp., FGIC Corp	89-0470	12/20/88
Public Service Enterprise Group Inc., Pennant Holdings Limited, Plainsboro Limited Partnership	89-0684	12/23/88
Mitsubishi and Mining and Cement Co. Ltd., Jacob and Jeanette Brouwer, Escondido Ready Mix Concrete, Inc., TTT Concrete, Inc	89-0686	12/23/88
Kinki Nippon Railway Co., Ltd., Unipac, Ltd., a California limited partnership, Unipac, Ltd., a California limited partnership	89-0688	12/23/88
Southmark Corp., Countrywide Credit Industries, Inc., Countrywide Funding Corp	89-0692	12/23/88
Herbert F. Johnson Distributing Trust, Safety-Kleen Corp., Safety-Kleen Corp. (Restaurant Division)	89-0696	12/23/88
The Coastal Corp., TOTAL Campagnie Francaise des Petroles, TOTAL Compagnie Francaise des Petroles	89-0700	12/23/88
Carena Holdings Limited, Olympia & York Developments Limited, First Canadian Development Co	89-0703	12/23/88
Bain Venture Capital, Palais Royal, Inc., Palais Royal, Inc	89-0704	12/23/88
Bain Venture Capital, 3 Beall Brothers 3, Inc., 3 Beall Brothers 3, Inc	89-0705	12/23/88
Valid Logic Systems Inc., Integrated Measurement Systems, Inc., Integrated Measurement Systems, Inc	89-0708	12/23/88
Valid Logic Systems Inc., Analog Design Tools, Inc., Analog Design Tools, Inc	89-0710	12/23/88
Old Republic International Corp., Lincoln Holding Corp., Lincoln Holding Corp	89-0712	12/23/88
Peter B. Bedford, Maxxam Inc., Kaiser Hawaii Kai Development Co	89-0714	12/23/88
Kemper Corp., Maxxam Inc., Maxxam Inc	89-0715	12/23/88
Ford Motor Co., Centel Corp., Centel Credit Co	89-0719	12/23/88
CC&F Private Partners, L.P.-I, Trustees of T.I.A.A. Stock, certain assets of WRC Properties, Inc	89-0727	12/23/88
Haseko Corp., MSM and Associates, Inc., MSM and Associates, Inc	89-0737	12/23/88
Kazumi Kawazoe, Dr. Richard R. Kelley, Hotel Operating Co. of Hawaii, Ltd	89-0745	12/23/88

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89-342 Filed 1-6-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 908]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement and Availability of Funds for Fiscal Year 1989

Introduction

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1989 funds for cooperative agreements for Human Immunodeficiency Virus (HIV) prevention projects for minority and other community-based organizations (CBOs) serving populations with and at risk of HIV infection and Acquired Immunodeficiency Syndrome (AIDS).

Authority

This program is authorized under the Public Health Service Act: section 301f(a) (42 U.S.C. 241(a)), as amended and section 317 (42 U.S.C. 247b(a)), as amended.

Eligible Applicants

Eligible applicants are nonprofit community-based organizations, located in the Metropolitan Statistical Areas (MSAs) most heavily affected by HIV infection/AIDS. Congress has authorized funds to provide direct financial and technical assistance to CBOs in those areas most heavily affected by the HIV epidemic so that they may work in their own communities to achieve a reduction of the risky behavior that leads to HIV transmission. These areas as defined by cumulative number of AIDS cases reported to CDC and entered into the CDC surveillance database as of December 1, 1988 are: California: Anaheim, Los Angeles, Oakland, San Diego, San Francisco; Colorado: Denver; Florida: Fort Lauderdale, Miami-Hialeah, Tampa, West Palm Beach-Boca Raton; Georgia: Atlanta; Illinois: Chicago; Louisiana: New Orleans; Maryland: Baltimore; Massachusetts: Boston; Michigan: Detroit; New Jersey: Bergen-Passaic Counties, Jersey City, Newark; New York: Nassau-Suffolk Counties, New York City; Pennsylvania: Philadelphia; Texas: Dallas, Houston; Washington: Seattle; the District of Columbia; and San Juan, Puerto Rico.

Eligible applicants located in the above MSAs must be nonprofit

corporations or associations whose net earnings in no part lawfully accrue to the benefit of any private shareholder or individual. Any of the following is acceptable evidence of nonprofit status:

A. A reference to the applicant organization's listing in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;

B. A copy of a currently valid IRS tax exemption certificate;

C. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals;

D. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; or,

E. Any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

This proof must be provided before an award can be made, in no case later than July 1, 1989. No award will be made without proof of nonprofit status.

Availability of Funds

It is expected that approximately $9,750,000 will be available in Fiscal Year 1989 to support approximately 75 projects. Awards will range from $20,000 to $225,000 with an average award of $130,000. At least $5,000,000 will be awarded to community-based organizations which represent and serve minority persons and whose governing body is composed of more than 50% racial and/or ethnic minority group members (Asians, Blacks, Latinos/Hispanics, Native Americans, and Pacific Islanders). Priority will be given to supporting at least one project in each of the eligible Metropolitan Statistical Areas. In addition, approximately 15–20 awards will be made to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition.

Awards will be made for a 12-month budget period within a 1- to 3-year project period. (*Budget Period* is the interval of time into which the project period is divided for funding and reporting purposes. *Project Period* is the total time for which a project has been programmatically approved.) Continuation awards for new budget periods within an approved project period are made on the basis of satisfactory performance and availability of funds. No funds will be provided for patient treatment or care. These funds may not be used to supplant existing funding. Funding estimates outlined above may vary and are subject to change.

Purpose

The HIV epidemic constitutes a significant threat to the public health of the United States. High risk behavior such as intravenous (IV) drug use with needle paraphernalia sharing or having sex with an infected person may result in the transmission of HIV. Pregnant women who are infected with HIV may also infect their unborn baby. One of the important means currently available to reduce the prevalence of risky behavior and HIV transmission is effective education about the behaviors that spread the virus from an infected person to an uninfected person, the consequences of infection, and how to prevent becoming infected. Other ways to reduce risky behavior include influencing community norms in support of safer behaviors and developing skills for practicing them.

Congress has therefore authorized funds to provide direct financial and technical assistance to CBOs in the areas most heavily affected by the HIV epidemic so that they may work in their own communities to achieve a reduction of the risk of HIV transmission. Because racial and ethnic minorities have been disproportionately affected by the HIV epidemic, Congress has also authorized CDC to provide direct financial and technical assistance to minority CBOs in these areas most affected by the HIV epidemic. The support is specifically for those CBOs providing information and other services to populations at increased risk of HIV infection and/or HIV infected persons.

The overall goals of the nationwide HIV prevention program are to help uninfected individuals initiate and/or sustain behavior that will eliminate or reduce their risk of becoming infected. The goals are also to assist infected individuals in adopting behaviors that will avoid transmitting the virus to others.

Program Requirements

Recipient Activities

1. Needs Assessment

Applicants should assess the need for the proposed program by:

A. Contacting their State or local health department AIDS Coordinators to obtain information on HIV prevalence in the target populations and HIV/AIDS related baseline knowledge, attitudes, beliefs, and when available, behavior data and other information relevant to the needs of the target population;

B. Identifying other organizations and agencies that are providing to the target populations services which are related to or supportive of the activities being proposed by the applicant; (and briefly listing the services which these organizations and agencies are providing); and

C. Identifying gaps in HIV prevention activities directed to the target populations.

2. Health Education/Risk Reduction

Based on the needs assessment:

A. Develop specific, time-phased, and measurable program objectives;

B. Target these programs to individuals whose behavior may place them at increased risk of HIV transmission, particularly those belonging to racial and ethnic minority populations, including but not limited to:

(1) Infected persons;

(2) Men who have or have had sex with men;

(3) Individuals who exchange sex for drugs or money;

(4) IV drug users who share paraphernalia;

(5) Persons with sexually transmitted diseases; and

(6) Persons who are or were sex or needle sharing partners of those listed above, especially female partners.

C. Develop and conduct culturally sensitive and language specific HIV prevention education programs to reduce or eliminate risky behavior. In addition, some members of the target population may have disabilities which hinder learning and which may require special approaches to communication;

D. Address the need for prevention and treatment of other sexually transmitted diseases when carrying out HIV prevention programs.

3. Collaboration

In implementing programs:

A. Plan and conduct program activities in collaboration and coordination with State/local health departments;

B. Collaborate and coordinate activities with appropriate organizations involved in HIV prevention and education programs serving the target population in the local area, whenever possible. Such organizations would include, as appropriate:

(1) Community groups/organizations, including churches and religious groups, especially those with a racial/ethnic minority membership and focus, and those that serve populations at increased risk;

(2) AIDS service organizations;

(3) Schools, boards of education, and other local education agencies; and

(4) Federally-funded community networks.

Examples of such collaboration include letters of support or workplans jointly developed with local health departments and other community organizations and agencies.

4. Evaluation

Develop and implement an evaluation plan to:

A. Monitor the accomplishment of program activities and progress toward achieving each objective; and

B. Determine how program activities affect the target population and how they will help ensure that State, local, and national HIV prevention goals are addressed. Collaboration with the State or local health department is essential for this activity.

Centers for Disease Control Activities

The CDC activities are to:

1. Provide consultation and technical assistance in planning, operating, and evaluating prevention activities;

2. Provide up-to-date scientific information regarding risk factors for HIV infection, prevention measures, and program strategies for prevention of HIV infection;

3. Assist in the evaluation of program effectiveness;

4. Assist recipients in collaborating with State and local health departments and other PHS-supported HIV/AIDS recipients; and

5. Facilitate the transfer of successful intervention programs to other areas.

Evaluation Criteria

Eligible applications submitted under this announcement number will be evaluated by a two-step review process.

1. *Initial Evaluation*—CDC-convened ad hoc committees will initially review all applications and evaluate them based on the following criteria:

A. The extent to which the applicant demonstrates ties with and credibility with the target population as evidenced by previous service to that population (10 points);

B The extent to which the applicant plans to involve the target population in carrying out the program (10 points); and

C. The extent to which the applicant provides proof of endorsement by other organizations serving the target population (5 points).

Applications will be ranked based on this preliminary review as follows:

Applicants Applying as Other Than a Minority CBO: Based on the priority of funding 15 to 20 awards to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition, applications from applicants applying as other than a Minority CBO will be ranked without regard to MSA location.

Applicants Applying as a Minority CBO: Based on the priority of funding at least one project in each of the eligible MSAs, minority CBO applications will be ranked within MSAs. In addition, when referring applications for final review, the number of HIV/AIDS cases, percent of population, and percent of minorities in each of the MSAs will also be taken into account in determining the number of applications for each MSA to be referred for review.

2. *Final Evaluation*—A second review will be conducted by CDC-convened review committees on applications referred from the initial review. These applications will be evaluated on an individual basis according to the criteria below:

A. The need for program support as described by the applicant (20 points);

B. Evidence of the ability of the applicant to carry out the proposed program as demonstrated by ties with and credibility within the target community, and to collaborate with appropriate organizations as described in the Recipient Activities Section (25 points);

C. The extent to which the proposed objectives are specific, measurable, time-phased, related to the recipient activities, and related to national HIV prevention goals (20 points);

D. The quality of the applicant's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting its objectives, and the extent to which requested funds are for direct provision of HIV prevention services to the target population (20 points); and

E. The extent to which the evaluation plan measures the accomplishment of program objectives (15 points).

In addition, consideration will be given to the appropriateness and reasonableness of the budget request, proposed use of project funds, the extent to which the applicant is contributing its own resources to HIV/AIDS prevention activities, and the need to provide support in each of the eligible Metropolitan Statistical Areas.

In future years, noncompeting continuation applications within an approved project period will be evaluated on safisfactory progress in meeting project objectives as determined by site visits by CDC representatives, progress reports, the quality of future program plans, and the availability of funds.

Funding Priorities

At least $5,000,000 will be awarded to community-based organizations which represent and serve minority persons and whose governing body is composed of more than 50 percent racial and/or ethnic group members (Asians, Blacks, Latinos/Hispanics, Native Americans, and Pacific Islanders). Priority will be given to supporting at least one project in each of the eligible Metropolitan Statistical Areas. In addition, approximately 15–20 awards will be made to organizations serving populations at high risk of HIV infection without regard to their racial/ethnic composition.

Other Requirements

Recipients must comply with the document titled: Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions. In complying with the Program Review Panel requirements contained in the document, which appears below, recipients are encouraged to use an existing Program Review Panel such as the one created by the Health Department's AIDS/HIV Prevention Program.

Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs October 1988

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. They include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship. For those individuals who do not eliminate risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial. This document is intended to provide guidance for the development of educational materials, and to require the establishment of local review panels to consider the appropriateness of messages designed to communicate with various population groups.

1. Basic Principles

a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion

pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to describe dangerous behaviors and explain less risky practices concening AIDS should use terms or descriptors necessary for the target audience to understand the meassages.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as homosexual men, about high risk sexual practices, would be judged by a reasonable person to be inoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Educational sessions should not include activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

e. Messages provided to young people in schools and in order settings should be guided by the principles contained in "Guidelines for Effective School Health Education to Prevent the Spread of AIDS" (MMWR 1988; 37 [suppl. no. S-2]).

f. AIDS education programs and education curricula funded by CDC from the 1989 appropriations must be consistent with language contained in the Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1989 (Pub. L. 100-436) at 102 Stat. 1692. This language is as follows: "Notwithstanding any other provision of this Act, AIDS education programs funded by the Centers for Disease Control and other education curricula funded under this Act dealing with sexual activity—(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual, and (2) in addition, with regard to AIDS education programs and curricula—(A) shall be designed to reduce exposure to and transmission of the etiologic agent for acquired immune deficiency syndrome by providing accurate information, and (B) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse."

The *Surgeon General's Report on Acquired Immune Deficiency Syndrome* (October 1986) contains messages which are consistent with the provisions of this legislation. (Pub. L. 100-436)

2. Program Review Panel

a. Recipients will be required to establish a program review panel whether the applicant plans to conduct the total program activities or plans to have part of them conducted through subvention to nongovernmental organization(s). This panel, guided by the CDC Basic Principles (in the previous section) in conjunction with prevailing community standards, will review and approve all written materials, pictorials, audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdication. Specifically, applicants for cooperative agreements/grants will be required to include in the application the following:

(1) Identification of a panel of no less than five persons representing a reasonable cross-section of the general community [1] but which is not drawn predominantly from the target population or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational groups sessions are directed; and

(2) A letter or memorandum from the proposed project director, countersigned by a responsible business official, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

b. When a cooperative agreement/grant is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment copies of written materials, pictorials, and audiovisuals proposed to be used;

(2) Provide for assessment by the Program Review Panel text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals proposed to be used;

(3) Prior to expenditure of funds related to the ultimate program use of these materials, assure that their project files are documented with a statement(s) signed by the Program Review Panel specifying the vote for approval or disapproval for each proposed items submitted to them that is subject to this guidance.

(4) Provide to CDC in regular progress reports signed statement(s) of the chairperson of the program review panel specifying the vote for approval or disapproval for each proposed item which is subject to this guidance.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.118.

Application Submission and Deadline

Preapplication

Applicants are encouraged to submit a preapplication (Standard Form 424) to: (1) determine eligibility before devoting significant expenditures of effort in preparing an application, and (2) obtain information about the availability of technical assistance in developing applications. A preapplication will consist of the Standard Form 424 and the information requested in the paragraphs below. An original and 2 copies of the preapplication should be addressed to:

Centers for Disease Control, Procurement and Grants Office, AIDS Community Based Project—A45, 1600 Clifton Road NE., Atlanta, Georgia 30333. *Preapplications must be received no later than 4:30 p.m. (e.s.t.) February 6, 1989* to ensure that CDC has time to provide technical assistance.

For eligibility to be determined, applicants must provide proof that they meet the requirements outlined under the heading Eligible Applicants; that is, proof of nonprofit status or proof that an application for nonprofit status has been filed.

Applicants should also provide a brief description of the target population, proposed risk reduction activities, and evidence of established ties with the target populations at risk. This description should not exceed two single-spaced typewritten pages. Applicants should also indicate whether they are applying as a minority CBO.

[1] Panels which review materials for use with school age populations should include representatives of such groups as teachers, school administrators, parents, and students.

Minority applicants who choose to also apply for funding to target high risk populations *without regard to their racial/ethnic composition* must submit a separate application which clearly describes the high-risk target population and risk reduction activities which the applicant proposes to address. The application must also provide evidence of the appropriate established ties with the target population at risk.

Upon receipt, CDC will determine whether eligibility criteria have been met and will notify applicants of the determination within 1 week of receipt of their preapplication. Therefore, applicants are encouraged to submit their preapplication as early as possible so that they will have as much time as possible to develop their final application.

Technical assistance will be available in the form of workshops in locations convenient to the eligible metropolitan Statistical Areas. Workshops for some MSAs will be combined and will be held in January and February. In addition, a CDC staff person will be assigned as project officer to each of the CBOs submitting a preapplication. This project officer will be available to respond to questions and to ensure the CBOs are notified of the workshop dates and location, and to provide further technical assistance.

Final Application

The original and two copies of the final application (PHS Form 5161–1) must be addressed to: Centers for Disease Control, Procurement and Grants Office, AIDS Community Based Project—A45, 1600 Clifton Road NE., Atlanta, Georgia 30333, on or before March 14, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are received no later than 4:30 p.m. (e.s.t.) March 24, 1989.

2. Late Applications: Applications not received by this deadline are considered late applications and will not be considered in the current funding cycle and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Carole J. Tully or Marsha A. Jones, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, (404) 842–6640.

Announcement Number 908, "Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects" must be referenced in all requests for information pertaining to these projects. A Spanish translation of the Announcement is available upon request.

Technical assistance may be obtained from Jack Kirby, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1450 or (404) 639–2778.

CDC will conduct technical assistance workshops to provide applicants with the opportunity to obtain assistance in preparing their applications, developing program plans, setting objectives, developing evaluation plans, and preparing budgets for AIDS/HIV prevention programs. See the Application Submission and Deadline—Preapplication section for additional information pertaining to the workshops.

Dated: January 4, 1989.

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89–395 Filed 1–6–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 86G–0202]

The Hereld Organization; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 5G0305) proposing that α-cyclodextrin is generally recognized as safe (GRAS) as an encapsulating agent for use in food.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 30, 1986 (51 FR 19612), FDA published a notice that it had filed a petition (GRASP 5G0305) from the Hereld Organization, 401 Christopher Ave., Suite 11, Gaithersburg, MD 20877. This petition proposed to affirm that α-cyclodextrin is GRAS for use as an encapsulating agent for use in human food. The firm has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 15, 1988.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–372 Filed 1–6–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the National Cholesterol Education Program Coordinating Committee

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on Friday, February 3, 1989, from 9 a.m. to 3 p.m., at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the agenda, list of participants, and meeting summary, contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institutes, National Institute of Health, C–200, Bethesda, Maryland 20892, (301) 496–0554.

Dated: December 30, 1988.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89–286 Filed 1–6–89; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Excess and Surplus Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies excess and surplus Federal property determined by HUD to be suitable for

possible use for facilities to assist the homeless

DATE: January 9, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice identifying Federal buildings and real property in the current excess and surplus inventory of the General Services Administration (GSA) that HUD has determined to be suitable for use for facilities to assist the homeless.

The order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501, HUD is to collect information from Federal landholding agencies about such properties and to identify which of the properties are suitable for use for facilities to assist the homeless. HUD is in the process of surveying Federal agencies to collect the information, and will make determinations of suitability, based on established criteria, as it receives information from the agencies. Pursuant to the court order, HUD will publish a Notice in the **Federal Register** on a weekly basis of properties determined to be suitable.

The properties identified in this Notice are from the current excess and surplus inventory of GSA. The court order required HUD to complete suitability determinations for at least 50 percent of the properties in GSA's excess and surplus inventory by December 28, 1988, and for the remainder by January 12, 1989. The properties in this Notice are the result of an assessment of 65 percent of the inventory. Suitability determinations for the remainder will be made no later than January 12, 1989.

Suitability determinations are based on information provided by GSA. The determinations are classified as: (1) Suitable buildings for occupancy; (2) suitable buildings for non-occupancy; (3) suitable vacant land. Each determination is subject to the property's being used in compliance with applicable Federal, state, and local requirements. Buildings and land found suitable are identified even though they may be currently occupied or in use. The issue of availability will be addressed by GSA or the Department of Health and Human Services (HHS). Detailed information about the property may be obtained from James Folliard ((202) 535-7052) or Richard Stinson ((202) 535-7067), Federal Property Resources Services GSA, 18th and F Streets NW., Washington, DC 20405. (These are not toll-free numbers). (Please refer to the GSA identification number given with each identified property.)

Public bodies and private nonprofit organizations wishing to apply for use of a property should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to Judy Breitman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, Md 20857; telephone (301) 443-2265. (This is not a toll-free telephone number.)

Dated: January 3, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

Suitable Buildings for Non-occupancy

White Sands Missile Site, Mountain Home, ID, 9-D-ID-404Q
Widscliffe Port Site, Widscliffe, KY, 4-J-KY-0576
Westover Communication Transmit Facility, Chicopee, MA, 2-D-MA-716Q
Rock Hall Tower Site #13, Kent County, MD, 4-D-MD-492-O
Norfolk Lake, Baxter & Fulton Counties, Ark and Ozark, Co., MO, 7-D-AR-482-C
Federal Building & Post Office, Port Gibson, MS, 4-G-MS-474A
Paley Transmitter Annex Site, Seymour Johnson AFB, NC, 4-D-NC-580-A
Dayton Depot, Warehouse No. 3, Moraine, OH, 1-B-OH-748A or 5-G-OH-748-A
Songbird Warehouse Site, Bradford, PA, 4-A-PA-730
Portion, Former Valley Forge General Hospital, Phoenixville, PA, 4-GR(2)PA-666YY
PHS Indian Hospital, Rapid City, SD, 10-F-SD-506
ILS Outer Market Annex, Ogden, UT, 7-GR-UT-421W

Suitable Buildings for Occupancy

International Flight Service Station, Tracy, CA, 9-U-CA-1283
1401 Sepulveda Blvd, West Los Angeles, CA, 9-G-CA-514K or 9-6V-CA-514K
Portion, Bell Federal Ctr., Bell, CA, 9-G-CA-0698G
Point Arena, Tract 200, Point Arena, CA, 9-D-CA-1212
Portion, Square 571, Washington, DC, 4-G-DC-0461-A
US Army Reserve Ctr., Waycross, GA, 4-D-GA-638
Shoshone Administrative Site, Shoshone, ID, 9-I-ID-405A
Oxford Slough, Oxford, ID
Dana Loran Station Family Housing, Dana, IN, 1-U-IN-505D
National Weather Service Upper Air Facility, Boothville, LA, 7-C-LA-538
Portion, Middle River Fed. Depot, Middle River, MD, 4-G-MD-453E
Furlong Building, Pontiac, MI, 2-GR-(1)-MI-693
Headwaters, Headquarters Site, Remer, MN, 01-D-MN-0548
Lee Ft. Port Terminal, Vicksburg, MS, 4-J-MS-520A
Federal Building, Smithfield, NC, NC-0591 or 4 G NC 591
Tonopah Resource Area Housing, Tonopah, NV, 9-I-NV-467
Mountain View Manor Loop (903, 904, 908, 920), Tonopah, NV, 9-U-NV-467A
Mountain View Manor Loop (922, 927), Tonopah, NV, 9-U-NV-467B
GSA Depot, Binghamton, NY, 1-G-NY-760
Kingsley Family Housing Annex, Klamath Falls, OR, 9-D-OR-434I
Ridgeview Housing, Hauser, OR, 9-N-OR-668
Portion, Former Valley Forge General Hospital, Phoenixville, PA, 4-GR-PA-666
Portion, Former Ramey AFB, Aquadilla, PR, 01-D-PR-0475
US Courthouse, San Juan, PR, 1-G-PR-479
Federal Building, Maryville, TN, 4-G-TN-611
Border Patrol Station, Carrizo, Springs, TX, 7-J-TX-995
Federal Building & Post Office, Rockwell, TX, 7-G-TX-800A
Federal Building, San Antonio, TX, 7-G-TX-985
Barracks K (Between Washington Blvd & Columbia Pike West, Arlington County, VA, 4-C-VA-573
3 Residences, Warden, WA, 9-1-WA-0557F
Elma Residence, Elma, WA, 9-B-WA-917A
Ranger Residence, Landover, Fremont County, WY, 7-A-WY-531

Suitable Vacant Land

Alabama Army Ammunition Plant, Childersburg, AL, AL-474-J2

Missile Site #7, Tucson, AZ, 9-D-AZ-0583K
Missile Site #5, Tucson, AZ, 9-D-AZ-583J
Missile Site #10, Tucson, AZ, 9-D-AZ-583-H
Portion, Tract #3, Davis Monthan AFB, Tucson, AZ, 9-D-AZ-437FFF
Missile Site #4, Tucson, AZ, 4-D-AZ-583G
Portion, Camp Elliott, San Diego, CA, 9-D-CA-0694A
Portion, Former FCC Monitoring Station, Santa Ana, CA, 9-GR-(1)-CA-598B
Warm Springs and Lake Sonoma, Sonoma County, CA, 9-D-CA-1293
Portion, Former ENT AFB, Colorado Springs, CO, 7-D-CO-404-C
Former, US Army Reserve CTR., West Palm Beach, FL, 4-D-FL-682A
National Archives Records Admin., East Point, GA, 4-G-GA-640
Albion Substation, Albion, ID, 9-B-ID-414A
Government Quarters, Ft. Hall, ID, 9-I-ID-0501B
Chicago Moorings, Chicago, IL, IL-681
Cannelton Locks & Dam Project, Harrison County, IN, 2-D-IN-569A
Portion, VA Hospital, Corner, Leavenworth, KS, 7-GR(4)-KS-426E
MSO Morgan City Housing Property, Berwick, LA, 7-U-LA-536
Old Lock & Dam No. 5, Sterlington/Union Parish, LA, 7-D-LA-537
Portion, Fort George G. Meade, Anne Arundel County, MD, 4-GR-MD-433D
Tract 1—Manistique Coast Guard Light Station, Manistique, MI, 2-GR-2-MI-571
Aurora Administrative Site—Tract No 4113, Aurora, MN, 1-A-MN-540
Pomme De Terre Lake (2 Tracts), Hickory County, MO, 7-D-MO-456B
Proposed Army Reserve Site, Butte, MT, 7-D-MT-590
Cambridge Canal System, Furnas Co., NE, 7-I-NE-429A
Parcel No. 2, Portion, New Jersey, Job Corps Center, Edison, NJ, 1-L-NJ-463H
Stockpile, Deming, NM, 7-G-NM-45AB
Portion, Former Brookhaven National Laboratory (Shoreham), Brookhaven, NY, 2-GR-NY-429X
Portion, Whitney Pt. Dam & Reservoir, Whitney Pt., NY, 2-D-NY-749A
Portion, Camp Sherman Rifle Range, Chillicothe, OH, 2-GR-OH-433B
Portion, Tract 110—Wright Paterson AFB, Fairborn, OH, 1-D-OH-460-0
Portion, Tract A-135—Dillon Lake Project, Falls Township, OH 1-D-OH-779
Portion, Clarence J. Brown Dam & Reservoir, Springfield, OH, 1-D-OH-722A
NOAA Storm Lab, Enid, OK, 7-C-OK-424-AH
Portion, Camp Gruber, Muskogee County, OK, 7-GR-OK-421-G
Green Peter Lake Rock Quarry, Linn County, OR, 9-I-OR-675
John Day Corridors, Sherman County, OR, 9-B-OR-682
Cape Blanco Light Station, Sixes, OR, 9-U-OR-1283
Portion, Tract VE-176, Vancouver—Eugene T/L, Washington County, OR, 9-B-OR-562E
U.S. Reserve Training Site, Clinton, PA, 4-D-PA-735
Portion, Parking Lot, Philadelphia, PA, 4-G-PA-718
Tioga Hammond Lakes Project, Tioga, PA, 4-D-PA-699F
Smith & Jackson Counties, Carthage, TN, 4-D-TN-609A-L
NASA, Houston, TX, 7-Z-TX-904A
Lake Texoma, Lake Texoma, TX & OK, 7-D-OK-507—F & G
Army Aircraft Plant, Saginaw, TX, 7-GRI-TX-879
Portion, Federal Prison, Seagoville, TX, 7-J-TX-884-B
Former, Wendover AFB, Wendover, UT, 7-GR-UT-401K
Chief Joseph Dam, Bridgeport, WA, 9-D-WA-0746
Portion, Vancouver Barracks, Vancouver, WA, 9-GR-WA-049A

[FR Doc. 89-292 Filed 1-6-89; 8:45 am]
BILLING CODE 4210-27-M

Office of Environment and Energy

[Docket No. I-89-151]

Intent to Issue a Finding of No Significant Impact, McNair Farms, Fairfax County, VA

The Department of Housing and Urban Development gives notice concerning the subject prosposal, that it intends to issue a Finding of No Significant Impact (FONSI) based on the preliminary Environmental Assessment (EA) prepared for the project. Comments are solicited before the HUD Philadelphia Regional Office will make a final determination whether to proceed without preparing an Environmental Impact Statement (EIS).

Description

McNair Farms is a proposed mixed use development located south of Herndon, Virginia in Fairfax County. It is approximately 10 miles west of I-495 and 1½ miles east of Dulles International Airport, along Centreville Road between Fox Mill Road and the Frying Pan Park. The overall site consists of 317 acres, of which 264 acres are included in the request for Title X land development assistance. The HUD Title X program provides mortgage insurance assistance for land acquisition, land and site preparation and the installation of infrastructure to allow land to be sold for housing and related uses.

The overall project will provide for up to 3,550 residential housing units at an average density of approximately 15 dwelling units per acre. The project will also accommodate up to 534,000 square feet of commercial and retail space. The Title X project area includes 12 land (development) bays which will provide for a mix of housing types including 67–77 low density detached single family units, and the remainder will be high density town houses and midrise multifamily units. In addition, 500 units of elderly housing is proposed for the non-Title X portion of the overall project. Mortgage insurance for the construction of housing units is not part of the Title X program. Fairfax County has approved the rezoning of the property essentially from R-1 low density residential to PDH-16 to accommodate the mixed use development. Preliminary development plans have been approved for three of the land bays.

The site is relatively flat and the most recent use of the property has been for farming. The overall project will include the widening of Centreville Road to six lanes and the extension of Frying Pan Road and Coppermine Road (both four lanes) through the property. About 10 percent of the land is in the floodplain of the Frying Pan Tributary and the property also contains several ponds and wetland areas.

Purpose of FONSI Notice

Pursuant to HUD environmental regulations at 24 CFR Part 50, a preliminary EA has been prepared by HUD's Washington, DC Field Office to determine whether or not an EIS is required. It is the tentative finding of the EA that there would be no significant impact on the human environment and that the project is in compliance with the National Environmental Policy Act, including initiating the consultation processes under the related environmental laws and authorities cited at 24 CFR 50.4. Therefore, in accordance with the applicable regulations, a proposed FONSI has been prepared, and a Notice to that effect is hereby published.

Impacts that have been identified and related to historic preservation, floodplain management and wetlands protection are addressed through specific procedural processes for those issues.

In accordance with 40 CFR 1501.4(e) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final determination on the FONSI. Interested individuals, governmental agencies, and private organizations are invited to comment on the proposed FONSI. *Comments should be submitted to:* Regional Environmental Officer, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392.

The proposed EA and supporting documentation may be examined during normal business hours at the Washington, DC Field Office, Room 3158, HUD Building, 451 Seventh Street SW., Washington, DC, as well as the location noted above. Inquiries concerning the EA should be made to Margaret Krengel, Regional Environmental Office at (215) 597–1829, or Millicent C. Grant, Washington, DC Field Office Environmental Officer at (202) 453–4532. (These are not toll-free numbers.)

Dated: January 4, 1989.

Dorothy S. Williams,

Deputy Director, Office of Environment and Energy.

[FR Doc. 89–374 Filed 1–6–89; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–3110–10–7201–GP9–0104; NM NM 68533]

Issuance of Mineral Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to the State of New Mexico on August 29, 1988, for the oil, gas, and other minerals, including valuable deposits of sand, gravel, caliche, and similar minerals and the geothermal resources in and under the following described land in Catron, Cibola, Socorro, and Valencia Counties, New Mexico, pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), and Section 503 of the Act of December 31, 1987 (101 Stat. 1544):

New Mexico Principal Meridian

T. 8 N., R. 3 W.,
sec. 28, all;
sec. 30, lot 1, E½, and E½W½;
sec. 34, lots 1 to 4, inclusive, W½E½, and W½.

T. 4 N., R. 4 W.,
sec. 2, lots 8, 9, and E½SE¼.

T. 5 N., R. 4 W.,
sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, And SE¼;
sec. 8, all;
sec. 10, all;
sec. 14, NE¼, W½, N½SE¼, and SW¼SE¼;
sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
sec. 20, all;
sec. 22, all;
sec. 26, W½ and W½SE¼SE¼;
sec. 28, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
sec. 34, all.

T. 3 N., R. 5 W.,
sec. 1, all;
sec. 12, all;
sec. 13, all;
sec. 24, N½, SW¼, N½SE¼, and SW¼SE¼.

T. 4 N., R. 5 W.,
sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
sec. 12, all;
sec. 24, all.

T. 4 N., R. 7 W.,
sec. 24, SW¼NW¼;
sec. 26, E½.

T. 3 N., R. 14 W.,
sec. 26, S½;
sec. 27, SE¼.

T. 4 N., R. 15 W.,
sec. 6, lots 1 to 13, inclusive, NE¼SW¼, and SE¼;
sec. 8, all;
sec. 17, N½ and SE¼;
sec. 21, E½, E½W½, and W½NW¼;
sec. 25, W½W½.

T. 6 N., R. 20 W.,
sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
sec. 20, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½W½.

Containing 18,785.09 acres.

In exchange for all the minerals in the land described above, the oil, gas, and other minerals, including valuable deposits of sand, gravel, caliche, and similar minerals and the geothermal resources in and under the following described land in Cibola County, New Mexico, were reconveyed to the United States.

New Mexico Principal Meridian

T. 4 N., R. 9 W.,
sec. 2, lots 1 to 4, inclusive, S½NW¼, and S½
sec. 6, lots 1, 2, 4, and 5.

T. 5 N., R. 9 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, S½;
sec. 12, S½SW¼, NE¼SE¼, and SW¼SE¼, and SW¼SE¼;
sec. 16, all;
sec. 24, E½W½;
sec. 30, N½NE¼, SE¼NE¼, SE¼SW¼, and SW¼SE¼;
sec. 32, all;
sec. 36, all.

T. 7 N., R. 9 W.,
sec. 16, all.

T. 8 N., R. 9 W.,
sec. 32, all;

T. 4 N., R. 10 W.,
sec. 2, lots 1 to 12, inclusive, and S½.

T. 5 N., R. 10 W.,
sec. 32, all;
sec. 34, SW¼SE¼;
sec. 36, all.

T. 8 N., R. 10 W.,
sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
sec. 16, all;
sec. 36, all.

T. 6 N., R. 11 W.,
sec. 32, all.

T. 9 N., R. 12 W.,
sec. 14, all;
sec. 20, all;
sec. 22, all;
sec. 24, all;
sec. 26, all;
sec. 28, all;
sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
sec. 32, all;
sec. 34, all.

T. 8 N., R. 13 W.,
sec. 14, NW¼NE¼ and SE¼NW¼;
sec. 16, all.

Containing 16,209.65 acres, more or less.

The purpose of the exchange was to consolidate Federal mineral ownership for the Federal Government within El Malpais National Conservation Area and National Monument. The exchange was consistent with land ownership adjustments as set forth in the Record of Decision for the Rio Puerco Resource Management Plan approved January 16, 1986, and Public Law 100–225 of December 31, 1987, which established El Malpais National Monument and National Conservation Area.

Dated: December 23, 1988.

Larry L. Woodard,

State Director.

[FR Doc. 89–205 Filed 1–6–89; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been revised and submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the revised collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303–231–

3046. Comments and suggestions on the information collection should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Production Accounting and Auditing System Oil and Gas Reports.

Abstract: Production Accounting and Auditing System information is needed to provide comprehensive production and disposition data on oil and gas produced from Federal onshore and offshore leases, and from Indian leases. The Minerals Management Service (MMS) uses the data to monitor production, for audits, and to compare reported production with sales data reported in the MMS Auditing and Financial System.

About half of all onshore oil and gas lease operators formerly reporting to the Bureau of Land Management (BLM) have begun reporting production data to MMS using Form MMS–3160. All onshore lease operators were to be reporting to MMS by the end of Fiscal Year (FY) 1989. However, funding to complete the transfer has not been appropriated for FY 1989. Lack of funding will cause a delay in the transfer of responsibility from BLM to MMS and cause a reduction in the estimated burden hours for this information collection in FY 1989. The delay affects only those respondents still reporting onshore oil and gas production to BLM. Respondents already reporting to MMS will continue to do so.

Bureau Form Numbers: MMS–3160, and MMS–3160A, MMS–4051, MMS–4052, MMS–4053, MMS–4054–A,B,C, MMS–4055, MMS–4056–A,B,C, MMS–4057, MMS–4058, MMS–4061.

Frequency: Monthly, annually.

Description of Respondents: Companies producing and processing oil and gas from Federal onshore and offshore leases, and from Indian leases.

Estimated Completion Time: One-half hour to 1 hour.

Annual Responses: 174,180.

Annual Burden Hours: 109,490.

Bureau Clearance Officer: Dorothy Christopher 703–435–6213.

Date: November 23, 1988.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 89–329 Filed 1–6–89; 8:45 am]

BILLING CODE 4310–MR

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-No. 308X)]

Burlington Northern Railroad Co.; Abandonment Exemption in Stearns County, MN

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 2.78-mile line of railroad between mileposts 58.94 and 59.50 and between milepost 0.00 and 2.22, near St. Cloud, in Stearns County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding a cessation of service over the line is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days are prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of interest of intent to file an offer of financial assistance has been received, this exemption will be effective on February 8, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 19, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 30, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–339 Filed 1–6–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[Docket No. AB–3(Sub-No. 83X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Walker County, TX

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 0.36-mile line of railroad between milepost 6.67 and milepost 7.03 at Huntsville in Walker County, TX.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 8, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 19, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by January 30, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, 1416 Dodge Street, Room 820, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by January 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275–7316. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–340 Filed 1–6–89; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440–48446).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

Drug Control and System Improvement Discretionary Grants

AGENCY: Bureau of Justice Assistance, Office of Justice Programs, Justice.

ACTION: Final notice of program priorities.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing the program announcement for the Drug Control and System Improvement Discretionary Grant Program of the Anti-Drug Abuse Act of 1988, Title VI, Subtitle C, Subpart 2 of Pub. L. 100–690 and is requesting applications and proposals for announced programs. The Discretionary Program is part of the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.

DATES: Due dates for each program are included in the individual program announcement.

ADDRESSES: All concept papers and final applicaitons (original plus two copies) should be addressed to the Bureau of Justice Assistance, 633 Indiana Avenue NW., Washington, DC 20531. A copy of the concept paper/application should also be sent to the State Office which administers the Drug Control and System Improvement Formula Grant Program in the state(s) affected by the proposed program.

FOR FURTHER INFORMATION CONTACT: For general information about the priorities and range of discretionary grant programs, contact James C. Swain, Director, Discretionary Grant Programs Division, 633 Indiana Avenue NW., Washington, DC 20531, 202/272–4601. For specific information on individual program requirements, contact the person indicated in the text for each program.

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1988 amends the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711, *et seq.*, hereinafter referred to as the "Act"), and creates the Drug Control and System Improvement Program. Further, this Act unifies two previous public laws: The Justice Assistance Act of 1984 and the Anti-Drug Abuse Act of 1986. This Act gives *special emphasis* to assisting states implementing drug control strategies, with secondary emphasis on assistance to improve the criminal justice system's overall response to violent crime and serious offenders. Section 511 of the Act sets aside 20 percent or $50,000,000, whichever is less, of the total amount appropriated for the Program in a special discretionary fund for use by the Director of BJA in carrying out the purposes established in section 501(b) of the Act. Those purposes are:

- Undertaking educational and training programs for criminal justice personnel;
- Providing technical assistance to States and local units of government;
- Undertaking projects which are national or multi-jurisdictional in scope, which meet the needs of communities and which address the purposes specified in the Act; and,
- Providing financial assistance for demonstration programs likely to be a success in more than one jurisdiction (section 510 of the Act).

The Bureau of Justice Assistance solicited recommendations from more than a thousand Federal, state, and local law enforcement, prosecution, judicial, corrections, and treatment practitioners to assist in the development of priorities for this Program. The Bureau of Justice Assistance will respond under separate cover to each respondent. Working groups of practitioners and national experts were established to review recommendations received, indentify effective programs responsive to those recommendations and propose funding priorities in each of the program areas.

The strategy for the Drug Control and System Improvement discretionary Grant Program is to provide balanced and comprehensive support for state/local initiatives against serious crime problems, especially those problems relating to drug abuse and control, and to improve the functioning of the

criminal justice system at the state and local level. The strategy considers:

- Enhancing the capacity of the States to define drug problems and focus program development in areas of greatest need;
- Continuing programs which are demonstrating success in bringing new concepts and techniques to the criminal justice system;
- Initiating new efforts to meet emerging issues or focus on problems not addressed in previous year programs;
- Disseminating programs of proven effectiveness through evaluation and other documents, technical assistance and training;
- Providing a support delivery system to assist implementation of effective programs;
- Geographic distribution of programs to meet regional and state needs; and,
- Special attention to the needs of inner-city communities.

Application and Award Process

The FY 1989 appropriation for Part E discretionary programs is approximately $30,000,000. A portion of these funds were earmarked by Congress for specific programs. This program announcement contains application/proposal requests for a major portion of the available appropriation. The Bureau of Justice Assistance makes every effort to establish an open and competitive application process. Applicaitons or concept papers are being requested. A panel of experts will be established in each of the program areas to review applications or proposals submitted on a competitive basis. Some awards will be negotiated directly with organizations that are uniquely qualified to provide specific services. Such awarding processes are described in this announcement.

Outline of Contents

Recommendations to Applicants

A complete discretionary grant application requires a Standard Form 424 "Federal Assistance." Copies of the form and a completed sample are available upon request to the BJA address noted earlier. After completion of this document it must be signed by a duly authorized official (Item 23) and dated concept papers do *not* require a completed SF424.

Financial Requirements

Discretionary grants are governed by the provisions of the Office of Management and Budget (OMB) Circular applicable to financial assistance. The Circular along with additional information and guidance are contained in the "Financial and Administrative Gude for Grants," Office of Justice Programs, Guideline Manual, OJP M7100.1 (current edition), available from the Office of the Comptroller at the address noted earlier.

Non-Discrimination

The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded in whole or in part with funds made available under the Act. Applicants for discretionary grants are also subject to the provisions of the Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; Title XI of the Education Amendments of 1972, the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulation 28 CFR Part 42, Sub-parts C,D,E, and G.

Intergovernmental Review of Federal Programs

On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs," to provide state and local governments increased and more effective opportunities to influence federal actions affecting their jurisdictions. Final regulations (28 CFR Part 30) implementing the Order for the Department of Justice were published in the **Federal Register** on June 24, 1983 (48 FR 29238). The Order and the regulations permit States to establish a state process for the review of federal programs and activities, to select which programs and activities (from a previously published list) they wish to review, to review proposed federal programs and activities, and to make their views known to the Department through a state "Single Point of Contact" (SPOC). The Order and the implementing regulations revoke the former A–95 clearance process. Applicants for these programs, except those that are national in scope, must submit copies of their applications to the appropriate state Single Point of Contact, if one has been established and if the State has selected these programs to be covered in its review process. Copies should be sent to the SPOC at the same time they are submitted to BJA. Under the regulations, the state process has at least thirty (30) days to comment on non-competing continuation applications and at least sixty (60) days to comment on all other applications.

Evaluation

The United States Department of Justice and the Congress have a strong interest in determining what impact BJA programs have in state and local jurisdictions. Do they in fact lead to improvements in crime prevention and drug control, in expeditious and fair case processing and disposition, in better coordination and cooperation among criminal justice system agencies and between these agencies and private and public organizations with which the system must interact and the public that the system serves? Answering these questions leads BJA to a strong commitment to independent and comprehensive evaluation of programs which are initiated through discretionary and block grant funding.

To the extent it is feasible, the announced programs contain provision for such evaluation. Where programs are continuations, an evaluation component may already exist. For new programs, evaluations may be prescribed in the program announcement or anticipated upon completing guidelines to be developed jointly between the Bureau of Justice Assistance and the National Institute of Justice.

These guidelines will be developed and announced in the near future and may effect some of the programs with BJA is announcing today. For that reason, all applicants should be aware of the need to include in their program provisions for adequate documentation of what the program entailed and what it accomplished and, where individual case processing or management is involved, should undertake adequate data collection to allow later independent evaluation.

Applicants should contact the appropriate BJA contact person for their program for further guidance about the evaluation requirement if applications are to be submitted prior to issuance of further information from BJA on this point.

Subpart I—Crime Prevention and Education

Program title: National Citizens' Crime Prevention Campaign.

Goals/objectives: To continue the National Citizens' Crime Prevention

Campaign which features McGruff, the crime dog, the nationally recognized symbol for crime prevention and his "Take A Bite Out Of Crime" slogan. This campaign will continue to be spread by the production and airing of public service announcements; the 124 member Crime Prevention Coalition and related activities; producing a full range of materials from brochures to books for practitioners, citizens, and youth as well as technical assistance and training provided through national/state workshops.

Background: Crime prevention has become and continues to be an important part of our daily lives. Programs and initiatives are now implemented by Federal, state and local levels of government, community organizations, businesses, churches, civic organizations, schools, and citizens. Examples of programs inlcude Neighborhood Watch in both urban and rural communities, Drug Prevention, Business Watch, Teen Programs, Child Safety Programs, Programs for the Senior Citizen, Arson Prevention, Safe Homes for Kids, Operation Property Identification, Home Security, and many others.

The National Citizens' Crime Prevention Campaign was developed in 1978 by the U.S. Department of Justice, the Advertising Council, Inc., and the Crime Prevention Coalition, which at that time numbered 19 members. Since the airing of the first "McGruff" public service announcement (PSA) in 1980, the campaign has continued to grow and flourish. Administering the "McGruff Camapgin" and providing Secretariat support to the Crime Prevention Coalition is the responsibility of the National Crime Prevention Council (NCPC), a not-for-profit organization that provides a wide array of services to a diverse constituency including individual crime prevention practitioners, agencies serving youth, community organizations, schools, corporations, law enforcement, state governments and associations, and Federal agencies. These services include technical assistance and training, high quality materials, educational programs, a computerized database of nationwide crime/drug prevention programs, a resource library, and network building to support Federal, state and local crime/drug prevention efforts.

Through a cooperative agreement with BJA, the National Crime Prevention Council administers the day to day activities of the Campaign; develops, distributes, and promotes crime/drug prevention public service announcements, brochures, pamphlets, books, etc.; and provides technical assistance/training to support citizen based activities—convincing people that crime and drugs are not a fact of life, that better and safer communities can be developed.

Program description: Elements of this BJA/NCPC cooperative agreement will include the following:

- Drug prevention and demand reduction activities, targeting our nation's youth;
- Technical assistance directed at States to provide for cost-effective dissemination of prevention information and initiatives to local governments, communities, and citizens.
- Distribution of crime/drug prevention public awareness and positive action opportunities through "How-to Kits," newsletters, brochures, and booklets.

Assistance to citizens, practitioners, community organizations, schools, business, local government, state and Federal agencies will be provided through:

- A National Resource Library with over 1500 volumes on over 100 different crime prevention topics;
- A Computerized Information Center that contains over 5,000 current crime and drug prevention programs, the largest and most comprehensive database in the United States;
- A comprehensive package of crime prevention materials designed specifically for BJA block grant recipients, States, Coalition members, and crime prevention practitioners;
- National/state topical workshops and seminars;
- The continuation of efforts in demand reduction by BJA and NCPC, including providing technical assistance and training to field demand reduction coordinators of the FBI, DEA, and Border Patrol; developing and promoting demand reduction PSA's and support materials, and assisting in demand reduction related activities and special events;
- A national research and policy forum for the crime prevention practitioner. Efforts to include: One National Roundtable Workshop for state association and state policy makers, a state advisory council to provide guidance to NCPC on national issues, and various task forces called by BJA/NCPC to focus on specific issue problems;
- The continuation of the partnership with the National Association of Stock Car Racers (NASCAR) focusing on crime/drug prevention activities and PSA's using nationally recognized Motor Sports Super-Stars.
- Continuation of Secretariat support to the Crime Prevention Coalition.

Additional national drug abuse prevention/demand reduction activities will include:

- Distribution of the McGruff "Drug Prevention Kit" to every school district in the United States;
- Media: Following up on the phenomenally successful McGruff "No Show" by developing a drug prevention video targeting kids 9–13 years of age, to be distributed to every school district in the nation;
- Develop and distribute a demand reduction Resource Guide for local law enforcement officers; and,
- Develop, monitor and evaluate neighborhood/community drug abuse prevention pilot (demonstration) projects.

Eligibility and selection criteria: A cooperative agreement with the National Crime Prevention Council will be continued.

Award period: This supplemental cooperative agreement will be for a period of 12 months, through September 30, 1990.

Award amount: The total award is $3,330,000.

Due date: The National Crime Prevention Council will submit an application by June 30, 1989.

Contact person: The BJA contact for additional information is Ronald J. Trethric, Director, Community Crime Prevention Programs, 202/724–8374.

Program title: Demand Reduction Demonstration.

Goals/objectives: To provide funding for one urban jurisdiction to demonstrate a new and innovative method to reduce the demand for drugs among the general population.

Background: The casual use of drugs among a substantial portion of the population provides a steady source of demand for drugs. Many of these users do not view casual use as a problem and find social acceptance of this view.

This program is intended to attract and demonstrate ideas from the community on how social tolerance of casual use of drugs can be eliminated so that casual usage is actually reduced.

Program description: This program is intended to provide an open competition among large cities and counties for new and innovative ideas on how social acceptance of casual use of drugs can be reduced or eliminated entirely, with active participation by law enforcement and other criminal justice agencies in drug prevention and education. To provide the largest possible impact for this program, which if successful will be

replicated in other jurisdictions, the program is limited to local units of government having a population of more than one million persons.

Other than limiting the size of eligible jurisdictions and requiring that the program address the specific issue of reducing demand for drugs by casual users through a reduced social tolerance, BJA is not placing any restrictions on the approach, scope or nature of the programs proposed. However, concept papers which are able to incorporate an objective measurement methodology within their program design by which to demonstrate actual reduced tolerance and use, will be favored.

Eligibility and selection criteria: This is a competition open to any local unit of government having a population larger than one million persons. Concept papers, not exceeding ten pages and containing a budget summary and narrative, are requested for consideration by BJA and a panel of individuals having expertise in the areas of criminal justice and drug abuse, prevention, and treatment fields. The proposing jurisdiction selected will negotiate a final application with BJA.

Award period: The award will be for a 12-month period.

Award amount: One grant will be awarded for up to $500,000.

Due date: Concept papers must be submitted no later than March 1, 1989.

Contact person: The BJA contact for additional information is James C. Swain, Director, Discretionary Grant Program Division, 202/272–4606.

Program title: Comprehensive Community Crime Prevention Demonstration.

Goals/objectives: To implement Phase III activities of this national demonstration project, which is demonstrating a comprehensive, cost effective crime prevention model that involves law enforcement working in cooperation with local governmental agencies, business, community organizations and citizens.

Background: The national crime prevention demonstration sites have played a vital role in the development of new approaches to crime prevention. For the past several decades, the Federal Government has provided both resources and financial assistance to cities, communities, and organizations for the development of new techniques and approaches to reduce crime. The ultimate goal was to transfer technology that was proven to be effective and could be replicated by another city county, or State.

Past crime prevention programs were examined and monitored and a new, more comprehensive approach was developed by the BJA. The model developed is known as the "systems approach." It is proactive, institutionalizes crime prevention throughout the law enforcement agency, utilizes crime analysis/data management, involves community interaction and participation which gives the citizen a sense of ownership, and promotes interagency cooperation by using a multi-disciplinary team of professionals to design and implement strategies for the community.

In 1986, four national crime prevention demonstration sites were selected through a competitive bidding process to implement the systems approach model. These sites are Tucson, AZ; New Haven, CN; Jacksonville, FL; and Knoxville, TN. Phase I activities included: the institutionalization of crime prevention within the host law enforcement agency; developing top level administrative support; training of officers and community volunteers in crime prevention techniques and practices; initiating and maintaining an active neighborhood watch; crime prevention through environmental design (CPTED) and, developing a community database to be used in conjunction with crime analysis/data management.

In the Fall of 1987, the cooperative agreements were extended to continue program development. Each program now utilized a process of Planning—Analysis—and Service Delivery. Phase II involved: Expanding and continuing Phase I activities; targeting a crime ridden area within the city to implement intensive crime prevention activities and municipal services; coordinating demand reduction activities within the school system and communities served; and the intensive analysis of a wide range of data sources to help identify and suggest solutions for chronic problems.

Program description: Phase III activities will specifically target demand reduction/drug prevention activities. Working in cooperation with the law enforcement agency, local governmental agencies, parole/probation, businesses, media, community organizations, churches, and citizens will coordinate and mobilize efforts to reduce crime. Initiatives will include: Increased crime prevention and demand reduction training for law enforcement personnel, local government and community volunteers; a prevention component for youth; enhancing the database; CPTED; establishing a city-wide network or hotline; and increased promotion to city residents using local media.

Eligibility and selection criteria: Programs in Tucson, AZ; New Haven, CN; Jacksonville, FL; and Knoxville, TN will be continued. The institute for Social Analysis will submit an application for continued evaluation.

Award period: The cooperative agreements for the sites and grant for evaluation will be continued for 12 months, through March 31, 1990.

Award amounts: Site awards will be $125,000; up to $100,000 will be provided to the Institute for Social Analysis to finish the evaluation of this demonstration project; the program total is $600,000.

Due date: Applications are due February 15, 1989.

Contact person: The BJA contact for additional information is Ronald J. Trethric, Director, Community Crime Prevention Program, 202/724–8374.

Program title: Drug Abuse Resistance Education (DARE) Regional Training Centers.

Goals/objectives: To continue providing on-site and documentary technical assistance and training for law enforcement and educational personnel, and to continue transferring the concept of the DARE program to additional States.

Background: BJA began funding this drug prevention program in 1986. Phase I provided resources for seven demonstration sites and one technical assistance and training site. The demonstration sites planned and organized drug prevention programs (using the DARE program as a model) which were implemented in School Year 1987–88, and which were responsible for training more than 45,000 students. The technical assistance and training project trained 132 police officers from the demonstration sites to teach drug use prevention education. Findings of the demonstration projects confirmed the need for additional training sites. BJA provided seed money for four DARE Regional Training Centers in 1988. Those centers are providing cost-effective, quality training for DARE officers and will train approximately 2,000 additional police officers during this project period. Those officers will teach in grades K–12 and/or work with and train other officers as instructors/mentors. These supplemental awards will provide resources for continuation of existing DARE Regional Training Centers, establishment of a new Center, and provision of technical assistance to agencies and schools implementing DARE programs in other jurisdictions.

Program description: Training will be provided for officers that teach in grades

K–12, for instructors/mentors and for updating the state-of-the-art for students, education personnel and officers. On-site and documentary technical assistance will be provided for agencies and schools implementing new DARE programs.

Eligibility and selection criteria: Four supplemental awards and one new award will be negotiated with the following: Arizona Department of Public Safety; City of Los Angeles Police Department; Illinois State Police Academy; Virginia State Police Department; and, North Carolina Department of Justice.

Award period: All awards will be for 12-month periods.

Award amount: There will be four supplemental awards and one new award of up to $125,000 each for a total program cost of $625,000.

Due date: Each applicant will submit a full application not later than January 31, 1989.

Contact person: The BJA contact for additional information is Dorothy L. Everett, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4604.

Program title: Congress of National Black Churches' Anti-Drug Abuse Program.

Goals/objectives: The objectives of this program are to:

- Summon, focus and coordinate the leadership of the Black Church in cooperation with the Department of Justice, other Federal agencies and organizations in support of a unified message and a structural plan to enable and assist high risk target communities to more effectively combat the problems of drug abuse and drug related crime;
- Use the leadership authority of key ministers in each target community, in conjunction with the local mayors, to forge a community-wide task force consisting of organizations, institutions, agencies, service providers and other prominent citizens to support the plan and specifically tailored strategies aimed at reducing the supply and demand for drugs and the crime associated with that demand;
- Mobilize groups of community residents through developmental forums to plan, review, refine and participate in implementing these specific strategies and to evaluate the appropriateness, utility and impact of assisting families and individuals in coping with the crises created by drug abuse and drug crime; and,
- Create a new national communications network between these target communities to allow for the exchange of information and comparison of results regarding the effectiveness of various strategies, and to form a more uniform consciousness of collective action in the fight against drug abuse and drug crime.

Background: Drug abuse and its attendant drug crime, which has been increasing at an alarming rate in recent years, has manifested itself extensively within black communities. There is a need to address capacity building within those communities to enable community involvement in fighting the challenge of drug crime from the perspectives of both supply and demand.

Program description: This program is intended to impact on the values of the Black community in its awareness of the dangers of drug abuse and drug crime and to enlist the active participation of the community in combatting illegal drugs from both the supply side and the demand side. Within the Black community, the church and its leadership has proved to be a primary galvanizing agent in motivating the community to act, and sustaining that motivation. The Black churches in target cities can be used as a structure to organize community involvement with traditional criminal justice agencies and other service providers to have a positive impact on reducing drug abuse and drug crime.

This is Phase III of a projected 30 month effort by the Congress of National Black Churches to implement a community capacity building and mobilization program within target cities, to address the issues and problems of drug abuse within the black community, and to develop srategies for action programs within those cities. The objective of this program is to effect and facilitate community involvement with criminal justice agencies and other traditional service-providing agencies and organizations to fight drug abuse and drug crime through both supply-side and demand-side strategies. The local Black churches of the target communities will serve as the catalyst for project implementation.

Eligibility and selection criteria: This award will be to the Congress of National Black Churches.

Award period: The extension period will be 12 months.

Award amount: This project is funded with combined funds from BJA and other sources. In FY 1989, BJA will provide approximately $150,000. The total amount from all funding sources is not known.

Due date: An application is due by June 30, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Subpart II—Apprehension

Program title: Financial Investigations.

Goals/objectives: To increase the number of narcotics related financial crime investigations and prosecutions; to develop a comprehensive operational approach to the investigation and prosecution of narcotics related financial crime, including asset recovery programs and mechanisms; and to provide financial investigation and analysis techniques training for investigators, prosecutors, and analysts.

Background: A clear picture of the nature of organized crime emerged from the records of the President's Commission on Organized Crime. Its methods are brutal, and its scope is pervasive. This is true for traditional organized crime and possibly even more so for emerging illegal drug trafficking conspiracies. These conspiratorial enterprises exist for one purpose, the tremendous profits to be obtained through crime. The principal income-generating activity for organized crime is the production and distribution of illegal drugs. Recent estimates of illegal drug trafficking revenues in the United States have been as high as $150 billion a year.

Development of successful cases against organized narcotics trafficking conspiracies requires use of unique investigative techniques. Civil and criminal forfeiture of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations, and to remove the assets they have amassed.

Program description: This new progam is designed to develop and implement centrally coordinated multi-jurisdictional financial investigation activities involving tracing narcotics related financial transactions, analyzing movement of currency, identification of criminal financial structures and money laundering schemes, and asset forfeiture administration. Emphasis will be on establishment of an interdisciplinary response to commonly shared major crimes related to drug trafficking conspiracies throughout a regional areea. A formal mechanism will be identified or created whereby investigative and prosecutorial resources can be allocated, focused, and

managed against targeted offenses and high level offenders to achieve maximum criminal and civil remedies, and to deprive them of the financial incentives to pursue illegal drug activities. Critical to the success of this progam is a shared management system of intergovernmental law enforcement/prosecutorial resources. Participation by a prosecutor will be a critical element of this program.

Eligibility and selection criteria: BJA will identify potential applicant agencies based on their observed capacity to conduct a complete and fully coordinated demonstration program in areas in which there is a high incidence of drug abuse and drug trafficking, and to identify major drug offenders and move those offenders expeditiously through the judicial system.

Of those agencies identified, BJA will make final site selection based on the following criteria:

- Joint agency management and direction of investigations and prosecutions, including the presentation of signed formal intergovernmental agreements;
- A coordinated approach to the crime problem which results in a major impact on illicit drug trafficking not achievable through a single agency case-by-case approach;
- Standardized procedures for central collection and dissemination of information for joint case administration and for investigative techniques and approaches;
- The proposed case threshold or selection criteria to be used in the selection and prosecution of complaints;
- The anticipated impact upon the criminal justice system and on the illicit drug problem;
- The organization and staffing plan; and a more specific criteria; and,
- The applicant's ability to specify how funds will be used to target investigations that focus on:
- Uncovering how funding is raised for the illegal purchase of drugs and who provides such funding;
- Discovering how profits from illegal drug transactions are laundered;
- Identifying profits resulting from illegal drug trafficking;
- Identifying assets acquired from illegal drug trafficking; and,
- Seizing assets gained from illegal drug trafficking under RICO or Continuing Criminal Enterprise, or similar state statutes.

Award period: Projects will be funded for 12 months.

Award amounts: A total of 10 grant awards will be made in the range of $150,000 to $225,000, for a total of $1,800,000. A technical assistance component will be provided through an award to the Institute for Intergovernmental Research in the amount of $300,000.

Due date: Due dates for the applications from IIR and from individual sites will be negotiated with each applicant.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Marijuana Eradication

Goals/objectives: To enhance, through coordinated planning and operations, the ability of Federal, state, and local law enforcement agencies to suppress cultivation of marijuana in potential growing areas and to minimize product availability through crop destruction.

Background: Domestic cultivation of cannabis requires the attention of all levels of government; however, the nature of domestic production places it primarily within the jurisdiction and capabilities of state and local authorities. To assist these efforts the Drug Enforcement Administration (DEA) coordinates the National Domestic Marijana Eradication and Suppression Program which promotes information sharing and provides training, equipment, investigative, and aircraft support to state and local officers. The U.S. Forest Service and the Bureau of Land Management are involved in a major effort to eradicate cannabis cultivated on federal lands. It is the state and local law enforcement role to manage the suppression of illegal cultivation while DEA's role in this cooperative venture is to encourage state and local eradication efforts, to lend intelligence information and technical advice and contribute resources to participating agencies.

Program description: The purpose of this program is to help state law enforcement agencies manage a statewide marijuana eradication program. Each project must be designed around four critical elements:

- *Coordination/Cooperation:* Each project must be composed of participating agencies. The senior agency administrators of the participating agencies must sign a formal intergovernmental agreement affirming their intent to fully participate in the coordination and operation of the project. At a minimum, the participating agencies must include the state, one local agency, and the DEA. The State enforcement agency must serve as the applicant agency and accept responsibility for the project's administrative and financial matters. The proposed operational eradication plan should specify the expected staffing required and the logistical commitment of each participating agency.
- *Planning:* Prior to the design of specific operations, data should be collected and analyzed that presents the most detailed description of the geographical areas in the state where marijuana cultivation may take place. State departments of agriculture, forestry, or natural resources may contribute information. The analysis of this information together with law enforcement intelligence provided by local, state, and federal agencies will be used to select criminal populations against which operations will be directed, the types of operations needed to attach various terrains, and methods of eradication. Analysis also insists in allocating personnel and equipment. Planning includes the consideration of needed agreements or commitments from other governmental agencies or private industry; the development of policies and procedures for the operation that incorporate such elements as lines of authority, handling juveniles or innocent people located on or near the area where marijuana is cultivated; apprehension of suspects; asset seizure and forfeiture of the property; and, the training of personnel assigned to the operation.
- *Administration:* Administration support of the program and its operations is critical. Since the program is based on cooperative agreements with other law enforcement agencies, operations are usually outside of normal administrative channels. Special arrangements may have to be made. Consideration should be given to the management of equipment and its maintenance/repair, the management and use of herbicides, and the transportation of harvested evidence by truck or helicopter slings to burning or storage sites. Administration support should be planned and delivered throughout each operation.
- *Security:* All marijana eradication activities are dangerous and vulnerable. This is especially true when contact is made between law enforcement personnel and criminals in remote locations far from backup support. Precautions must be considered, not only for the participating law enforcement personnel but for innocent persons within or entering the physical area of operations.

The success of the marijuana operation depends on its ability to provide sufficient evidence for prosecution, conviction, and seizure or

forfeiture of property. Therefore, direct and close interaction with prosecutorial authorities throughout each operation is critical.

Eligibility and selection critera: Two state law enforcement agencies will be selected from applications received, based upon a demonstrated need and material included in the applications that clearly demonstrates the ability to:

- Increase detection and eradication of cannabis cultivation;
- Increase arrest and prosecution of cultivators and distributors, including their ability to follow through with asset seizures and forfeitures;
- Provide training for the state and local officers participating in the operations;
- Provide for maximum safety for the officers and innocent civilians during operations;
- Identify any new or unusual cultivation trends or techniques; and,
- Develop and implement cooperative efforts with Federal and local agencies.

Award period: Site awards will be for a period of 12 months.

Award amount: Two successful applicant agencies will be awarded approximately $250,000 each.

Due dates: Applications are due March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Control Technical Assistance and Training.

Goals/objectives: To continue to provide for the management of technical assistance and training for state and local narcotics control enforcement programs to BJA grantees and other state and local law enforcement agencies; and to assist BJA to coordinate and improve communication and networking among law enforcement agencies.

Background: Congress has clearly intended BJA to fund programs that will have a profound and immediate impact on the ability of state and local law enforcement to counter illicit drug and narcotic trafficking in the United States. To ensure that law enforcement agencies throughout the nation have every means possible to enforce state and local laws relating to the production, possession, and transfer or sale of controlled substances, BJA offers technical assistance and training support through the Narcotic Control Technical Assistance Program (NCTAP). A cooperative agreement was awarded as a result of a competitive process in FY 1987, which created a partnership between BJA and the Institute for Law and Justice, Inc. (ILJ), for the purpose of managing and delivering this technical assistance and training program.

Program description: The Narcotic Technical Assistance and Training Program will continue to:

- Design and deliver nationwide training on a regional and request basis in topics including, but not limited to, drug investigations, supervision of drug units, narcotics street sales enforcement, use of microcomputers in narcotics investigations, narcotics enforcement and organized gangs, and advanced narcotics investigations;
- Design and conduct a program to provide technical assistance in narcotics control to law enforcement agencies, including BJA grantees, nationwide;
- Monitor and assess the progress of BJA discretionary grantees conducting narcotics-related law enforcement programs, and improve coordination and communication among grantees by conducting periodic management "cluster" conferences and personnel exchange programs;
- Conduct research, prepare, and disseminate program briefs, legal issues papers, monographs, handbooks, and other reports on narcotics-related topics;
- Design, develop, test and disseminate a variety of personal computer-based information/records systems to improve the efficiency, effectiveness, coordination, and communication of narcotics units and agencies;
- Conduct a series of gang suppression strategy conferences, to provide state and local law enforcement policy makers with a broad range of ideas on gang suppression techniques;
- Design, develop, and test a Field Training Officer (FTO) Program that will apply FTO techniques to narcotics investigators, to be implemented in four sites across the United States and result in a manual for implementation that can be used by narcotic commanders in state and local law enforcement agencies, with the long term result of an overall increase in the effectiveness of narcotic investigations;
- Design, produce and conduct a program for overall coordination of service delivery by all law enforcement technical assistance and training (TA/T) providers funded by the Omnibus Drug Initiative Act of 1988; and,
- Design and conduct a program to provide training and technical assistance to State and local forensics crime laboratory technicians and managers.

The latter activities would include:

- Serving as clearinghouse for all requests for assistance from state and local law enforcement agencies to BJA TA/T providers;
- Assigning, with BJA approval, TA/T requests to appropriate providers; monitoring TA/T delivery; and
- Producing a report on effectiveness of TA/T strategies with suggestions for modifications or improvement.

Eligibility and selection criteria: The existing cooperative agreement between BJA and the Institute for Law and Justice, Inc., will be continued.

Award period: This cooperative agreement will have a duration of 12 months.

Award amount: The award will be in the amount of $750,000.

Due date: The due date for the supplemental application will be negotiated with ILJ.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Crack/Focused Substance Enforcement Demonstration.

Goals/objectives: To improve the capabilities of state and local law enforcement agencies to investigate and immobilize crack cocaine trafficking organizations, and to:

- Enhance the ability of law enforcement agencies to attack higher-level crack cocaine trafficking organizations significant to their areas;
- Increase the rates of arrests, prosecution, conviction, drug removals, and asset forfeitures related to crack traffickers and/or organizations;
- Reduce the incidence of armed robberies and property related crimes committed to support crack cocaine habits;
- Reduce the incidence of violent crime (i.e., homicides) related to crack cocaine distribution;
- Improve the ability of state and local officers to develop strong Federal prosecution against crack traffickers by utilizing the current Federal statutes;
- Increase the utilization of Continuing Criminal Enterprise (CCE) and Racketeer Influenced Corrupt Organizations (RICO) statutes to target and immobilize crack trafficking organizations; and,
- Facilitate the development, implementation, and dissemination of intelligence information on crack trafficking organizations by all members involved in the Crack Task Forces.

Background: This ongoing program is a hybrid enforcement approach incorporation elements successfully utilized in Drug Enforcement Administration, state, and local Task Forces, Organized Crime/Narcotics

Program (OCN) Task Forces and the old Law Enforcement Assistance Administration (LEAA) Organized Crime Discretionary Grant Program to focus on the enforcement of "crack" in major urban areas. The Task Force approach to drug enforcement is universally recognized by enforcement and prosecutorial officials as a viable method for dealing with drug activities and can be readily adopted to the enforcement of a specific drug problem.

Program description: This ongoing effort will significantly enhance state, local and Federal efforts to combat the rapidly growing availability of crack and the threat it poses to our nation. This enhancement reflects the basis of our overall enforcement strategy of integrated operations and makes available the resources to establish viable Crack Task Forces in metropolitan areas where they presently do not exist. The program includes the participation of the U.S. Attorneys and DEA. Federal agency participation in each project is a program requirement. Grant funds will be used primarily for confidential expenditures (purchase of equipment/purchase of information), overtime, specialized equipment (if necessary), and some administrative costs. DEA will pledge personnel and technical assistance support to each of these efforts. Task force personnel will be expected to travel to and participate in BJA management "cluster" meetings of similar enforcement projects. Grantees should allocate funds from the grant to cover the expenses of attending at least two conferences at locations to be selected at a later time.

Jurisdictions selected for awards should anticipate the submission, periodically, of statistics regarding case outcomes, including, arrests, prosecutions, convictions, recoveries, and asset seizures, to assess project accomplishments.

Eligibility and selection criteria: Only jurisdictions already participating in this program are eligible for awards. Four to five existing sites may be continued based on past successful performance. Consideration will be given to the level of commitment and effective utilization of the organization's own resources to implement the project. Consideration will also be given to the extent of the crack/cocaine problem within the applicant's geographical area.

Award period: The project extensions will be for 12 months.

Award amount: Grants will be funded at approximately $200,000 each for a program total not to exceed $1,000,000.

Due date: Applications will be due on or before March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Street Sales Enforcement Demonstration.

Goals/objectives: To demonstrate effective police efforts to target street level narcotic dealers and buyers through effective planning, investigation, and prosecution.

Background: In theory, street-level drug enforcement is one of the most effective uses of local police resources to combat drugs and the problem they create. For every innovative program that has succeeded, an almost identical program has been much less successful. This suggests that jurisdictions should design and implement their own program tailored to their own local conditions, and relying on the full range of local law enforcement, municipal, and community resources available. Collection and analysis of drug market and abuse data is important. Without them, the police run the risk of concentrating on less important markets or individuals, or of displacing the problem to different times, places, and distribution networks. The lack of good information also makes it difficult to redirect efforts once they have begun.

Program description: This ongoing demonstration program will be continued in some, if not all existing sites, for the purpose of strengthening urban enforcement and prosecution efforts targeted on street narcotics dealers and buyers.

At a minimum, site applications selected for continuation funding should address the following program elements:

- Data collection and analysis for identifying and using available resources and for using results of internal evaluation to revise programs to fit changing conditions;
- Emphasis on early involvement of the prosecution and court functions to ensure that both citizen's rights and system impact issues are addressed;
- Training and utilization of uniformed personnel, and certifying uniformed officers as narcotics and illicit drug experts for testifying in court;
- Deployment of street teams for on-going investigations and arrests of street drug traffickers, and for being responsive to citizen complaints;
- Vigorous enforcement effort to arrest and convict illicit narcotic/drug users;
- Organization and deployment of mobile task forces to target those areas of the city where street sales have become blatant;
- An undercover buy program concerned with enforcement efforts aimed at the street retailer who has become the most observable manifestation of narcotic trafficking;
- Asset seizure and forfeiture efforts when practical; and,
- Coordination of project mission with cognizant forensic laboratory and jail or holding facilities.

Project personnel will be expected to travel to and participate in BJA management "cluster" meetings of similar enforcement projects. Grantees should allocate grant funds to cover the expenses of attending at least two conferences at locations to be selected at a later time.

Jurisdictions selected for awards should anticipate the submission, periodically, of statistics regarding case outcomes, including, arrests, prosecutions, convictions, recoveries, and asset seizures, for the purpose of assessing project accomplishments.

Eligibility and selection criteria: Up to seven existing sites may be continued based on successful performance. Consideration will be given to the level of commitment and effective utilization of the organization's own resources to implement the project. Consideration will also be given to the extent of the illicit narcotics and drug trafficking problem within the applicant's geographical area.

Award period: Projects will be supplemented for up to 12 months.

Award amounts: Grants will be funded at approximately $150,000 each for a program total not to exceed $1,000,000.

Due date: Applications will be due on or before March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Clandestine Laboratory Enforcement Training and Certification.

Goals/objectives: To provide law enforcement officials, with the information necessary to safely investigate clandestine laboratories in accordance with the Occupational Safety and Health Administration's standards.

Background: Safety, legal, administrative, and regulatory issues surrounding the seizure of clandestine laboratories and the prosecution of criminals responsible for the laboratories are very complex. Law enforcement officials are beginning to have a better understanding of the special kinds of information needed by our uniformed and non-uniformed

officers and investigators. This information has been accumulated through the detection and seizure of several hundred clandestine laboratories. These hard-won experiences have helped to identify the hazards associated with these operations. Clandestine laboratories contain poisonous, flammable, and explosive chemicals. These chemicals are used, by criminals, with inadequate training and equipment to perform dangerous syntheses of controlled substances. There is a clear danger to the immediate community adjacent to the clandestine laboratory and to law enforcement officers assigned to these investigations.

Program description: BJA will enter into an inter-agency agreement with the Drug Enforcement Administration (DEA) to provide certified training to state and local law enforcement investigators assigned to seize clandestine laboratories, collect dangerous chemicals as evidence for prosecution, and transport and store dangerous chemicals.

Eligibility and selection criteria: An inter-agency agreement will be negotiated between BJA and DEA.

Award period: This project will be funded for 12 months.

Award amount: The agreement amount will be $150,000.

Due date: The date of the agreement will be negotiated with DEA.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Task Force Technical Assistance and Training.

Goals/objectives: To provide specialized technical assistance and training in the area of multi-jurisdictional law enforcement and prosecution approaches to narcotics trafficking. This program is designed to assist state and local criminal justice agencies develop and implement shared management programs involving multiple jurisdictions directed toward disrupting illegal narcotics trafficking at the highest conspiratorial levels.

Background: A clear picture of the nature of organized crime emerged from the records of the President's Commission on Organized Crime. Its methods are brutal, and its scope is pervasive. This is true for traditional organized crime and possibly even more so for emerging illegal drug trafficking conspiracies. The principal income-generating activity for organized crime is the production and distribution of illegal drugs. Recent estimates of illegal drug trafficking revenues in the United States have been as high as $150 billion a year.

Developing successful cases against organized narcotics trafficking conspiracies requires use of unique investigative techniques. Civil and criminal forfeiture of assets are now recognized by law enforcement as an effective means of depriving illicit drug traffickers of economic support and incentive. A formal mechanism whereby shared interdisciplinary resources are centrally coordinated can work to immobilize targeted offenders who manage these networks and organizations.

Program descritpion: The Institute for Intergovernmental Research (IIR) will both provide and manage the delivery of technical assistance and training services for multi-jurisdictional law enforcement and prosecution efforts. These services will be provided in conjunction with the continuing coordination role of IIR with regard to several ongoing enforcement programs. Expertise and examples derive from the Organized Crime Narcotics Trafficking Program (OCN) and Statewide Drug Prosecutions (SDP) programs will be applied to other jurisdictions experiencing similar problems on an as needed basis after approval by BJA.

The inter-jurisdictional nature of drug trafficking today requires cooperation and coordination not only among multiple law enforcement agencies, but also between law enforcement and prosecution. These coordinated efforts face many unique impediments which must be overcome in order to assure effective operations. Technical assistance and training will be provided in areas including: Geographical differences; varying authorities and disciplines; interagency agreements; case control; case management and tracking (including the use of micro-computer capabilities); investigative target selection; matters of liability; and, conflicts in agency policy and procedures.

Training and technical assistance needs in these areas will be provided after being identified and verified. Appropriate expert resources capable of delivering the needed information will be identified, and either provided by IIR staff or located from other expert sources throughout the U.S. and coordinated by IIR. Training and technical assistance will be provided on a multi-agency and interdisciplinary basis. In that inter-jurisdictional criminal conspiracies are involved, part of the service coordination will involve identification of key agencies affected—local, state and Federal, and law enforcement, prosecution and other—and assuring their interface in receiving the technical assistance and training.

In order to provide service delivery as efficiently as possible, consideration will be given to cost savings, costs sharing by the recipient, short term use of practitioners from operational agencies, regional scheduling, and use of current OCN and SDP resources wherever relevant and practical. Technical assistance needs will be handled by screening and verifying assistance requested, developing a pool of practitioner experts, facilitating and providing assistance, arranging follow-up, and evaluating service provision. Training needs will be met by developing course curricula, selecting training sites, developing a pool of expert instructors, delivering and supervising services, and evaluation of training.

Eligibility and selection criteria: This award will be made to the Institute for Intergovernmental Research to expand efforts under the OCN Program awarded in FY 1987.

Award period: The duration period for this supplemental grant will be 12 months.

Award amount: One award will be made for $100,000.

Due date: A due date for a formal application will be negotiated with IIR.

Contact person: The BJA contact for additional information is Richard H. Ward. Chief, Law Enforcement Branch, 202/272–4601.

Program title: Assets Seizure and Forfeiture.

Goals/objectives: To provide training, technical assistance and model demonstrations to assist local and state level officials to achieve maximum impact against drug traffickers under state laws.

Background: BJA has supported this major training and technical assistance program since 1986 by means of cooperative agreement with the Police Executive Research Forum. Local and state level officials in 16 states are being trained under the program which focuses on investigation and forfeiture under state, rather than Federal statutes. Other aspects of the program are a series of ground-breaking asset forfeiture publications and a newsletter for professionals in this important new field within law enforcement.

Program description: BJA will extend the program through FY 1989, providing six additional states with specialized training, adding two issues of the newsletter, and continuing the technical assistance and host visit functions.

Eligibility and selection criteria: The Police Executive Research Forum will receive a supplemental award.

Award period: The award period will be 12 months.

Award amount: An award of up to $500,000 will supplement the existing cooperative agreement.

Due Date: The Forum should apply for the supplement by February 15, 1989.

Contact person: The BJA contact for additional information is Fred W. Becker, Program Manager, Law Enforcement Branch, 202/272–4605.

Program title: Urban Street Gang Drug Trafficking Enforcement Demonstration.

Goals objectives: To develop city-wide or multi-jurisdictional enforcement projects to investigate and prosecute drug distribution by organized urban street gang networks.

Background: The phenomenon of urban street gang involvement in drug trafficking and its attendant violent crime is becoming increasingly widespread. These gangs generally are of some specific ethnic orientation, and pose very difficult cultural and operational problems for law enforcement. The gangs to be targeted under this initiative are those that are expansionist and entrepreneurial in character. They typically spread from a core geographical location to other cities, where they franchise the drug market by either absorbing existing networks or replacing them through the use of intimidation and violence.

We know through efforts funded by the Office of Juvenile Justice and Delinquency (OJJDP) and the National Institute of Justice (NIJ) that, while these gangs are youth oriented with heavy juvenile involvement, they are generally headed by young adults 18 to 25 years of age. This program represents an initiative aimed at gang drug trafficking and drug related violent crime, and is focused upon gang leadership.

Program description: The Urban Street Gang Drug Trafficking Enforcement Program is a demonstration program directed at the investigation and prosecution of drug distribution and drug related violent crimes by organized urban street gang networks. The focus of the program is on mid-level "crack" cocaine distribution. The program will concentrate on influential and controlling gang members.

To enhance their investigative and prosecutorial activities under this program, grantees will be expected to:

- Develop strategies to recognize and suppress emerging gang narcotics distribution and related activities; and
- Develop a formal and integral working relationship between law enforcement and Federal, state or local prosecution authorities to investigate and prosecute gang members as part of a conspiratorial entity or enterprise where possible.

Critical elements to be considered under this program are:

- Coordination with other components of the criminal justice system (e.g. probation and parole); and,
- Willingness and ability to share information with other grantees in this program to the extent permitted by law.

The program does not include:

- A focus on juvenile crime;
- Street-level gang sweeps by police;
- Prevention or treatment components; or,
- Funding for non-operational consultants (e.g. training or evaluation).

This program will be coordinated with the Office of Juvenile Justice and Delinquency Prevention to augment that office's companion efforts aimed at urban street gangs.

Eligibility and selection criteria: This is a competitive program. Applicants representing cities or multiple contiguous jurisdictions with a population in excess of 250,000, and which are able to demonstrate a high level of urban street gang drug distribution and drug related violent crime, are eligible for funding consideration.

Award Period: Grants will be for a 12-month period

Award amount: Two grants will be awarded for approximately $250,000 each, for a total program of up to $500,000.

Due date: Applications should be submitted no later than February 15, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Narcotics Enforcement in Public Housing.

Goals/objectives: To develop and implement a strategy to improve citizen security and the quality of life in public housing areas through the reduction of narcotics trafficking.

Background: While the problems of illicit drug use and drug trafficking in public housing units vary from development to development, they have become a major concern to law enforcement authorities. A majority of the millions of people living in our public housing complexes are, like their neighbors in other communities, honest, hardworking people who want to rid their housing complexes of the scourge of drugs. They want their development to be a place where they and their children can live, play, wait for a school bus, and visit neighbors without having to confront the violence associated with drug trafficking and use. In some cities, municipal police have been reluctant to undertake a visible active presence in public housing. The reasons, which are varied, may reflect local politics, friction between residents and police, or a lack of coordination between the Public Housing Authority and the police department.

Program description: The purpose of this program is to invite applications from urban law enforcement agencies to conduct a comprehensive drug enforcement program within targeted public housing complexes. It is not BJA's intention to set out specific critical elements of a program for which applicants are asked to respond, but rather to solicit from law enforcement agencies their ideas for developing and implementing a strategy to solve the problems of narcotic trafficking and the declining quality of life within the complexes. The following information, however, should be included in the application:

- A demographic description of the identified geographical target area;
- A commitment to using department personnel and citizens, by way of the establishment of a project advisory group, to develop the department's strategy for identifying drug problems and for seeking solutions to these problems;
- The identified Project Director, usually at the rank of lieutenant or above, with a commitment that, if possible, the officer remain the Project Director for the life of the project;
- A commitment, if appropriate, to assign a permanent police squad to the housing complex, the strength of which should be based on the department's analysis of the problems faced by the residents of the complex;
- A description of the commitment by local political decision makers to provide resources as needed to support project activities;
- A description of anticipated project approach and activities; and,
- A description of the project's relationship with other activities sponsored by Housing and Urban Development (HUD).

Applicants are encouraged to provide letters of support from appropriate municipal leaders and private institutions to ensure that the proposed drug enforcement plan has the necessary support. In addition, the successful applicants will be asked to provide selected data to BJA during the duration of the program so that project

accomplishments can be monitored and assessed. Information may be disseminated among other law enforcement agencies.

Grantees are required to send representatives to program management "cluster" conferences. Funds should be allocated from the grant to cover the expenses of personnel to attend at least two conferences at locations to be selected at a later time.

Eligibility and selection criteria: Applicants are limited to urban law enforcement agencies. Grants will be awarded through a competitive process. Since the key to the success of these projects rests with the level of commitment from the sites, selection will be made based on the commitment of the chief of police, the mayor, city manager, the public housing director, the sanitation code enforcement authority, the prosecutor, the residents of the target area and the demonstrated relationship with the local Housing and Urban Development (HUD) Office. The severity of the problem, the agencies approach to solve the problem and the proposed use of grant funds will also be taken into consideration.

Award period: Awards will be for a period of up to 12 months. Projects may need three to four months for data collection and analysis, selection of personnel, training, and coordination with other agencies and the community prior to full implementation.

Award amount: Two applicants will each be awarded grants up to $250,000 for a BJA program total not to exceed $500,000.

Due date: Applications are due on or before March 15, 1989.

Contact person: The BJA contact for additional information on this program is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Program title: Expert Systems for Residential Burglary Investigations.

Goals/objectives: To demonstrate the feasibility and practical value of artificial intelligence systems to assist police personnel to solve burglaries; to demonstrate the transferability of system rules from one jurisdiction to another with only moderate revisions; and, to demonstrate management modes and strategies for effective utilization and institutionalization of expert systems.

Background: Currently BJA is sponsoring demonstrations in three sites of burglary expert systems. The three, Tucson, AZ, Charlotte, NC, and Rochester, NY, are based on the prototype now operating in Baltimore County, MD, with some reference to the work being done in Devon-Cornwall (U.K.) as well. (The seminal work for a burglary expert system was done in Devon-Cornwall.)

Program description: BJA will expand the network of demonstration sites from three to four to demonstrate the model in one more diverse law enforcement environment. The additional site will make the model more accessible to officials in another region, and the network of users/local experts/technical assistance resources will be increased to the benefit of the law enforcement community.

Eligibility and selection criteria: BJA will modify and supplement the current cooperative agreement with the Jefferson Institute for Justice Studies.

Award period: The extension period will be 12 months.

Award amount: Up to $100,000 in supplemental funding will be awarded.

Due date: The Jefferson Institute for Justice Studies should submit an application on or before February 15, 1989.

Contact Person: The BJA contact for further information is Fred W. Becker, Program Manager, Law Enforcement Branch, 202/272–4605.

Program title: Drug Evaluation and Classification Demonstration and Documentation.

Goals objectives: This program will continue to provide state and local criminal justice agencies with documented procedures for the detection of categories of drug-impaired suspects of drug-related offenses.

Background: State and local law enforcement have dealt with a growing number of cases in which drivers, who are clearly impaired, have registered below the legal level for impairment on generally used tests for the presence of alcohol. It has been the general view that many of these drivers are impaired by other or additional drugs for which tests have not been routinely administered. Recent statistics from the Department of Transportation (DOT) indicate that one in ten Driving Under the Influence arrests involves additional drugs and that about one quarter of automobile crashes involve additional drugs. Limited data from shock trauma centers indicate the presence of drugs in more than a quarter of such crashes. In response to this problem, the Los Angeles Police Department has developed and, with the DOT, over the past ten years, has refined a specific procedure and training curriculum for drug impairment recognition and classification.

The Drug Evaluation and Classification Process is a standardized, systematic method of examining a person suspected of a drug-related offense, to determine: Whether the person is impaired; whether the impairment is drug-related; and which of seven categories of drugs is the likely cause of impairment. This rather unobtrusive examination has successfully undergone validation testing in both clinical and field settings. It has been used to establish probable cause for chemical testing of suspects and also as an independent basis for prosecution in some cases. It is more general than chemical testing procedures, in that it identifies categories of drugs (e.g., central nervous system stimulants) rather than specific drugs (e.g., cocaine). It is more specific than chemical testing procedures, in that it identifies drugs that are psycho-active at the time of testing rather than simply present in the body and it identifies classes of drugs (e.g., hallucinogens) which are psycho-active at such low dose levels as to be difficult to detect through chemical analysis.

DOT's National Highway Transportation Safety Administration, along with the Los Angeles Police Department and the International Association of Chiefs of Police, has been transferring this program through training at pilot site in Arizona, Colorado, New York and Virginia. BJA has provided support for this effort and will continue that support by providing resources for continued demonstration, documentation and transfer.

Program description: Under an Interagency Agreement, negotiated with DOT, BJA, will provide support for additional training resources to transfer the Drug Evaluation and Classification Process to pilot sites. BJA has received specific documentation of this process, and its refinement through transfer, and makes this information available in monograph form to guide potential block grnat and state and local resource allocation.

Eligibility and selection criteria: An Interagency Agreement will be negotiated with the Department of Transportation.

Award period: This award will be for 12 months.

Award amount: One award will be made in the amount of $100,000.

Due date: The date of this agreement will be negotiated with DOT.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Portland, Oregon, Clandestine Lab Program.

Goals/objectives: To provide funding for a program in the Portland, Oregon, metropolitan area designed to attack problems caused by clandestine activities.

Background: The Portland, Oregon, metropolitan area has been experiencing an inordinate problem with clandestine laboratory operations. A number of these labs have been successfully investigated and closed, leaving the metropolitan area with a massive problem of hazardous waste disposal and cleanup.

Program description: This program will be specifically designed to assist Portland area officials in the safe and effective removal of these wastes and the detoxification and cleanup of the lab sites. The application must demonstrate:

- A safe and effective plan for the removal of hazardous wastes, and site detoxification and cleanup;
- A plan for coordination of activities with the cognizant Regional Council of Governments, State environmental protection officials, and the U.S. Environmental Protection Agency; and
- A clearly defined project budget and budget narrative that demonstrates compliance with the financial requirements of the OJP Financial and Administrative Guide for Grants, M7100.1 (current edition).

Eligibility and selection criteria: The City of Portland, Oregon, will be eligible for funding under this program.

Award period: The award will be for a 12-month period.

Award amount: One grant will be awarded for up to $510,000.

Due date: The application must be submitted by no later than March 1, 1989.

Contact person: The BJA contact for additional information is Richard H. Ward, Chief, Law Enforcement Branch, 202/272–4601.

Subpart III—Prosecution

Program title: State Civil RICO Enforcement Against Major Drug Trafficking Networks Demonstration.

Goals/objectives: To significantly expand the current limited effort of the state civil Racketeer Influenced Corrupt Organizations (RICO) drug enforcement, by demonstrating the effectiveness and potential of civil RICO proceedings in cooperation with an operational network of local, state and federal law enforcement agencies against major drug trafficking enterprises.

Background: The problem of drug trafficking and the attendant laundering of illegally obtained assets continues to grow despite increasingly aggressive criminal enforcement by local, state and Federal agencies and the expansion of Federal criminal task force efforts to coordinate the attack on drug trafficking and money laundering. Both Federal and state cases worthy of prosecution and asset seizure often are delayed while assets disappear. Federal resources are limited and local criminal justice agencies are necessarily committed to the investigation and prosecution of criminal violence as a high priority.

In August 1988, BJA initiated a project designed to promote the increased use of civil RICO proceedings against narcotic trafficking enterprises. Two state Attorneys General are being selected to develop prototype projects showing the feasibility of developing and applying state civil RICO statutes in combating drug networks and in seizing their unlawfully obtained assets.

Program description: This new effort will demonstrate the full range of civil RICO enforcement strategies against drug trafficking and produce models for the appropriate application of civil RICO remedies against the entire spectrum of drug trafficking enterprise activity. State Attorneys General in their primary role as chief state law enforcement officer will receive financial and technical assistance and training to comprehensively demonstrate the effectiveness of state civil RICO proceedings in attacking drug trafficking enterprises and freezing and seizing illegally obtained assets. Based on analysis of the experienced Attorneys Generals' offices and the prototype projects developed under the current BJA-funded State Civil RICO Technical Assistance Project, this new demonstration effort will significantly enlarge the scope of this very promising approach in attacking drug trafficking enterprises.

In addition to initiating prototype civil RICO units, financial assistance will enable already established civil RICO efforts to demonstrate the effectiveness of complex financial investigation and coordinated criminal and civil proceedings involving local, state, regional and Federal enforcement resources in attacking major, statewide drug enterprises and their networks of money laundering activities. The on-going state civil RICO technical assistance project will be providing technical assistance and training both to the prototype and these demonstration sites and to other state civil RICO drug enforcement programs. In addition, the project is developing model pleadings, statutes and practice and procedures manuals and guidelines for Attorneys General who wish to develop a civil RICO unit.

Up to three demonstration projects will be selected to demonstrate the full range of civil RICO litigation techniques and practice and procedure for detecting, freezing, forfeiting, managing and sharing of unlawfully obtained assets will be documented, published and distributed. Technical assistance will continue to be provided by the existing BJA State Civil RICO Technical Assistance Project, administered by the National Association of Attorneys General.

Eligibility and selection criteria: Selected state Attorneys General will be the grantees. The Bureau of Justice Assistance will select the demonstration projects based in part upon the recommendations of the National Association of Attorneys General and the current project staff administering the State Civil RICO Technical Assistance Project. Selection criteria include:

- An existing, effective state civil RICO statute;
- Identified, feasible drug racketeering enterprise cases;
- Dedicated narcotics investigative resources within the Office of the Attorney General, or by virtue of law enforcement working relationships with other agencies;
- Cooperative relationships with local, state and Federal agencies including regional narcotics task forces and Law Enforcement Coordinating Committees;
- Availability of essential criminal drug enforcement tools and authority such as grand jury, subpoena power, use immunity, forfeiture, and electronic surveillance; and
- Demonstrated capacity to conduct financial investigations and complex civil or criminal litigation.

Award period: These projects will be funded for up to a 12 month period.

Award amount: Two or three state Attorneys General Offices will be selected to receive up to $200,000 for each demonstration project for a program total of $400,000.

References: The National Association of Attorneys General, Hall of the States, 444 N. Capitol Street, Washington, DC will provide interested applicants with the following:

- *The Use of State Civil RICO in Drug Enforcement: Analysis and Case Study*, National Association of Attorneys General, Thomas T. Swan, April, 1988.
- *The Office of Attorney General: Powers and Duties*, National Association of Attorneys General, Lynne Ross, edit., 1988;
- *Attorney General's Statewide Action Plan for Narcotics Enforcement*, New Jersey Attorney General W. Cary Edwards, January, 1988.

Due date: Applications are due on or before February 15, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Innovative Drug Prosecution Technical Assistance and Training.

Goals/objectives: To identify, document and disseminate the best of expertise and experience existing in the nation for innovative prosecutorial policies, strategies, procedures and techniques to convict and incapacitate drug offenders, who contribute significantly to the nation's local jurisdictions' crime problem.

Background: BJA has funded the American Prosecutors Research Institute (APRI) to support the development and operation of a comprehensive national-scope technical assistance and training project. APRI's staff, guided by policies set by the National District Attorneys Association's (NDAA) Drug Control Committee (44 elected prosecutors) and the collective experience and proven expertise of these 44 prosecutors' narcotic unit chiefs, is identifying and documenting the innovative policies, strategies, procedures and techniques for the investigation, prosecution and management of drug cases. This project is also the primary technical assistance and training resource for BJA's prosecution-based demonstration projects and similar block grant funded projects. The project staff, expert consultant services and documented information are also available, on a limited basis, to local prosecutors requiring assistance in the investigation and prosecution of drug cases.

Program description: This ongoing national-scope technical assistance and training project identifies, documents and makes available information on proven investigative and prosecutorial approaches currently being utilized by some of the more innovative of the nation's local prosecutors to prosecute and convict drug offenders (both users and traffickers). Based upon these proven, innovative policies and strategies, recommended approaches, procedures and techniques are being documented to encourage the wide transfer and implementation of these effective prosecution efforts. Printed information and expert consultant services along with comprehensive prosecutorial training programs have been developed for dissemination. These technical assistance and training efforts are available for local prosecutors to fully consider and adopt various proven, innovative approaches to enhance their prosecution and conviction of drug offenders. In addition, this program provides comprehensive technical assistance and training to BJA's demonstration and block grant funded drug prosecution program.

Eligibility and selection criteria: The current cooperation agreement with APRI wil be supplemented.

Award period. This on-going 18 month program, initially funded from FY 1987 funds, may be extended by a supplemental award.

Award amount: Up to $200,000 will be added to this project to design and conduct an evaluation of the BJA prosecutor-based demonstration progams. An operational, performance assessment of various innovative local prosecutor-based drug investigation and prosecution efforts may also be included in this supplementation.

Due date: The due date for a supplemental application will be March 31, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Innovative Drug Prosecution Inter-Jurisdictional Demonstration.

Goals/objectives: To demonstrate that prosecutors along with law enforcement agencies working in a multiple county/judicial district task force organization can successfully identify, investigate, apprehend and prosecute organizations or individuals engaged in drug offense activity that cuts across jurisdictional lines.

Background: Prosecutors understand that criminal organizations and individuals dealing in illicit drugs do not confine their activities to the political boundaries of a state, county, or municipal area. However, these boundaries do represent jurisdictional limitations of criminal justice agencies committed to the identification, investigation, apprehensive and prosecution of drug related crime. These jurisdictional limitations too frequently allow major drug distributors to avoid law enforcement and prosecutor efforts to effectively prosecute and curtail their multi-faceted activity. Apprehension and prosecution focused within a single jurisdiction often simply shifts the locus of illegal activity from one geographic area to another and allows it to continue and to flourish regionally. To succeed in prosecuting and convicting these larger networks of drug offenders and enterprises, a task force of committed prosecutorial and investigative resources from two or more jurisdictions is necessary.

Program description: As the chief law enforcement official in their respective counties/judicial districts, the prosecutors must take the lead in determining the required inter-jurisdictional policies, operational cooperation and dispute resolving mechanisms necessary to establish an effective multi-jurisdiction task force. Though flexibility in the organization and membership of the task force is desirable, program objectives, policies and procedures must be well-defined. The task force should consist of localities and jurisdictions which share common and identifiable illegal drug distribution activities.

The purpose of this program is to facilitate the establishment, or to enhance existing inter-jurisdiction task forces to demonstrate the effectiveness and improved results of this organizational approach. The individual jurisdictions participating in the task force must contribute the necessary investigation and prosecution resources to support and staff the task force. Federal funds may be used to hire qualified staff or consultant services to enhance the coordination and management of the task force and its ability to conduct complex investigations and prosecutions in areas utilizing electronic surveillance and financial transactions.

The task force must be led by one of the participating prosecutors. This prosecutor must be willing to assume overall operational responsibility and financial administration for the Federal funds. The task force must be comprise of the prosecutors from each of the participating jurisdictions and to the degree necessary, law enforcement officials from each participating jurisdiction.

In order to be considered for this demonstration effort, at a minimum the proposed or existing inter-jurisdictional task force should address or include the following information in its proposal (concept paper):

- The need for the task force organization with particular attention paid to:
- The types of drug crimes or organizations which exist in the region which are inter-jurisdictional in nature; and,
- The specific approaches in which the inter-jurisdictional task force will address the regional drug prosecution problem;
- The goals of the task force with particular attention paid to the stated need for the task force;
- The objectives of the task force indicating the manner in which these objectives will be measured to indicate attainment of the goals

• The proposed organization of the task force indicating:

• What jurisdictions wil be involved;

• The task force organizational structure and resources committed, including the total number and direct relationship of each police and prosecution agency within the task force structure, including a discussion of personnel resources which will be contributed, the total number of agencies participating, and their relative size;

• How policies will be established for the task force;

• How priorities and targets will be determined;

• How the work load will be divided among the members of the task force;

• How decision-making will occur;

• What mechanism will be established to resolve disputes;

• The amount of non-personnel resources which will be contributed;

• A one page budget summary indicating each jurisdiction's commitment and how the Federal funds are to be utilized; and

• Actual interagency agreements indicating each jurisdiction's cooperation in the task force or letters of support from each proposed prosecutor indicating a willingness to participate. This is an essential element of any proposal.

Eligibility and selection criteria: Applicants are limited to existing or proposed prosecutor-based, multi-jurisdiction task force organizations. The task force's lead prosecutor should submit a concept paper of approximately ten (10) pages addressing the six elements listed in the Program Description. In addition, existing task forces should include a summary description of how the program was developed and how it is currently administered. Selection will also be dependent in part on the level of jurisdictional commitments, the rationale for development and effective application of both the local and Federal resources, and agreement to participate in a project evaluation process.

Award period: The awards will be for a 12-month period.

Award amount: Two or possibly three grants of up to $200,000 each will be awarded to demonstrate this approach for a program total of $450,000.

Due date: Concept papers are due no later than March 15, 1989.

Contact person: The BJA contact for additional information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Statewide Drug Prosecution Technical Assistance and Demonstration.

Goals/objectives: To develop statewide enforcement and prosecution projects that enable states with statutory authority but without the necessary coordination of resources to effectively attack statewide drug trafficking offenders.

Background: BJA has funded seven statewide prosecution units to demonstrate the enhanced abilities of statewide coordinated narcotics and financial investigators and prosecutions. States were selected that were committed to the concept of creating a statewide capacity to detect, investigate and prosecute major drug trafficking conspiracies and to identify, seize, forfeit and share the unlawfully obtained drug proceeds and assets through a centralized, cooperative effort by local, state and Federal enforcement agencies.

The States vary greatly in their law enforcement organization and allocation of enforcement authority and jurisdiction. Different States have experienced very different problems in attempting to enforce criminal drug laws and to focus all of a state's resources on major drug offenders and conspiracies. State Attorneys General's Offices or comparable statewide prosecutor's offices having criminal prosecution authority have been chosen to serve as demonstration projects for the several differing approaches to providing coordinated selection, investigation and prosecution of drug trafficking.

Program description: Several statewide prosecution projects have been funded to develop centrally coordinated, multi-jurisdictional cases within a state and to bring statewide prosecutions. These statewide enforcement units have or are developing formal mechanisms to coordinate investigations and litigation resources and to target major offenders. Prosecutors will use state statutes such as criminal, forfeiture, money laundering and conspiracy, together with state-of-the-art enforcement tools to conduct intensive financial investigations and mount multi-jurisdictional parallel civil and criminal prosecutions of major organized criminal groups.

Eligibility and selection criteria: Two of the existing seven projects will be given limited continuation funding, based on demonstration successful performance and continuing need.

Award period: The continuation period will be up to 12 months.

Award amounts: Two currently funded demonstration sites will be considered for up to $250,000 each in continuation support. The technical assistance component will be continued in order to support the ongoing program, through a grant to the Institute for Intergovernmental Research in the amount of $200,000 for a program total of $700,000.

Due date: Applications are due on or before February 15, 1989.

Contact person: The BJA contact for further information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Program title: Development of Model State Drug Control Statutes.

Goals/objectives: To develop "model" state statutes to strengthen the investigation, apprehension, prosecution, and punishment capabilities of states in dealing with drug offenders and organizations trafficking in illegal drugs and narcotics.

Background: The ability of the criminal justice system to put drug offenders and their organizations out of business is becoming more sophisticated and in many ways more successful. As a result, drug traffickers have also developed and are using more sophisticated methods to avoid detection and to hide the proceeds from drug enterprises. In order to address and combat these innovative methods being used by drug traffickers at the state and local level, new legislation must be developed. In response to this need, the National Drug Policy Board has suggested that "model" state statutes be developed which address areas such as asset forfeiture, electronic surveillance, and money laundering in order to assist and, in many instances, enable state and local enforcement and prosecution efforts in this area. This would allow states to utilize their own prosecutorial and court system resources in addition to equitably sharing procedures upon which many state and local agencies currently rely.

Program description: This is a development program to formulate "model" state statutes which respond to the increasing number of complex methods created and utilized by drug statute offenders to avoid detection and prosecution and the imposition of criminal and/or civil sanctions. The grantee selection will: Review existing statutes to identify what sections of state statutes or complete state statutes have proved successful in the apprehension and prosecution of drug traffickers; determine what gaps exist in state statutes which prevent the detection, investigation, apprehension, and prosecution of drug traffickers; survey the states' and Federal laws to determine which existing statutes would

most likely be successful if enacted in other states; establish the preferred structure of the model state statutes in order to accomplish the stated goals of investigation, apprehension, prosecution and punishment of drug traffickers; and, promote the utilization of model state statutes across the country through the presentation of testimony, articles and limited technical assistance.

Eligibility and selection criteria: BJA will negotiate with several national organizations to obtain an application which best demonstrates the following:

- Familiarity with the recommendations of the National Drug Policy Board pertaining to "model" statute development;
- Knowledge and understanding of state and Federal statutes and relevant sections pertaining to asset forfeiture, electronic surveillance, money laundering and other pertinent areas related to drug offenses and offenders;
- Experience in the analysis, formulation and drafting of "model" statutes based on the successful sections of state and Federal statutes concerning the investigation, apprehension and prosecution of drug traffickers; and,
- Capability to provide training and technical assistance on a national basis.

Award period: The project will be funded for 12 months.

Award amount: The award will be a cooperative agreement with up to $132,000 being available to support this effort.

Due date: An application will be due on or before March 31, 1989.

Contact person: The BJA contact with additional information is Charles M. Hollis, Chief, Prosecution Branch, 202/272–4601.

Subpart IV—Adjudication

Program title: Drug Testing and Intensive Supervision Demonstration.

Goals/objectives: To demonstrate the effectiveness of drug testing as case screening and monitoring/supervision devices during the pretrial stage.

Background: For judges and magistrates, determining pretrial dispositions of arrestees is a critical and difficult process, usually conducted hurriedly and often with inadequate information about the arrestee, victim or crime. Inappropriate release or inadequate supervision of arrestees may result in additional harm or trauma to victims, additional crimes perpetrated by the arrestee, and justice delayed/denied should the arrestee fail to appear for trial. Further, research supports that there is a relationship between drug use and crime and that pretrial detention/release decisions by the court should reflect consideration of accurate information about the arrestee's drug abuse history and current usage.

Since FY 1987, BJA has implemented pretrial drug testing and supervision demonstration efforts in six sites (Tucson, AZ; Portland, OR; Wilmington, DE; Phoenix, AZ; Milwaukee, WI; and Prince Georges County, MD). These efforts are based in part on the model program from the District of Columbia Pretrial Services Agency and are structured to: (1) Augment existing criminal justice information about arrestees used for pretrial decision-making, (2) increase the number of pretial release options available to the court for arrestees who are not suited for formal drug treatment, yet should not be detained, and (3) provide a more intensive, supervised program tailored for arrestees exhibiting current drug usage.

Program description: The program to demonstrate the feasibility and replication of pretrial drug testing and monitoring contains three elements: operational sites, technical assistance, and a national-level evaluation. Participating sites will receive extensive technical assistance through the Pretrial Services Resource Center (PSRC), including on-site consultation, host-site visits, and workshops, as required. All sites will participate in a national evaluation, to be conducted by the Criminal Justice Research Institute (CJRI), which will provide both an impact and process assessment of the individual project sites and of the total program. One additional site, among those competing during last year's round, will be added to the program.

Eligibility and selection criteria: Based on continued demonstrated success, five existing sites will be refunded; and, one additional site will be selected by BJA from among those competing during last year's round. The PSRC will continue to provide technical assistance and training and program-related documents. The CJRI will undertake the evaluation of all participating sites.

Award period: All awards will be for 12 months of operation.

Award amounts: A total of $2,600,000 is allocated for this program. Up to $2,425,000 will be available to support programs in participating sites. Awards of up to $75,000 will be available to continue technical assistance and training for PSRC and up to $100,000 for continued evaluation by CJRI.

Due dates: Applications from the currently participating sites are due by March 31, 1989. Applications from PSRC and CJRI are due by June 30, 1989. The due date for an application from the newly selected site will be established at a later time by BJA and the site selected.

Contact person: The BJA contact for further information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: Expedited Management of Drug Cases.

Goals objectives: To demonstrate the effectiveness of differentiated case management focused on the timely adjudication of drug cases.

Background: The timely and effective processing of drug cases presents a challenge to general jurisdictional trial courts. Increasing arrests/prosecutions add to the caseload volume and unique features attendant to adjudication of drug cases can contribute to major delays. A new technique, Differentiated Case Management (DCM), is being demonstrated and show great promise to further promote the expeditious processing of criminal and civil cases and guide more effective use of adjudication resources during the life of the case. The program concept is to formally screen/assess cases, divert those cases to special processing tracks based on such factors as complexity, and supervise those cases (especially those which require extraordinary coordination and use of court resources). Implicit in the success of this technique is the high level of planned coordination among the court, prosecutor and the public defender agencies. The strategy of Expeditious Management of Drug Cases Program is to employ the DCM concept exclusively for cases in which one or more drug offenses are charged.

Program description: Up to three courts will be selected through a competitive process to participate as demonstration sites. The selection of sites will be based on responses to the Request for Proposals and recommendations by an independent review panel. Emphasis in the program will be given to those local jurisdictions which demonstrate a significant caseload comprising of drug offenses, a coordinated case screening process among the prosecutor, public defense, and court agencies, a case management system which allocates and schedules resources for the timely completion of cases in which those cases, based on characteristics, are assigned to processing tracks, and an automated information system which directly supports case management.

The program will be conducted in two phases: An initial three month period in which participating jurisdictions will prepare for operations and a nine month

period to conduct implementation. Technical assistance will be available in both phases to address general and specific problems.

Eligibility and selection criteria: General jurisdiction criminal courts will be selected based on a competitive process. The critical elements, along with selection criteria will be advertised in a Request for Proposals (RFP) to be released by March 1, 1989. Interested jurisdictions may obtain the RFP through the identified BJA contact person. BJA will select the organization through which technical assistance will be provided in support of the demonstration sites.

Award period: All awards will be for 12 months.

Award amount: Up to three demonstration sites will receive awards ranging from $100,000 to $200,000 for a total of $400,000; and award up to $100,000 will be granted for technical assistance.

Due dates: Proposals will be due May 1, 1989.

Contact person: The BJA contact for further information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: TASC Program Development, Technical Assistance and Training.

Goals objectives: To continue to provide to local and state criminal justice agencies and block grantees necessary technical assistance and training connected with TASC programs and to continue to define and refine the critical elements for individual case management and accompanying performance standards, assessment protocols and outcome measures.

Background: Many evaluations have found treatment for drug-dependent offenders to be most effective when there is direct criminal justice involvement. The threat of criminal justice sanction motivates offenders to enter treatment and, perhaps more importantly, motivates them to stay in treatment for a period of time sufficient for behavior change. Treatment Alternatives to Street Crime (TASC) Programs have fared well in these evaluations and in the assessment of local jurisdictions; over 100 such programs continued during the hiatus of Federal funding, during the early 1980s. In response to this track record, the Congress has included TASC, specifically, in the Omnibus Drug Initiative Act as deserving of continued support. BJA has found TASC programs to be well-evaluated but erratically documented; thus, initial program development and assistance efforts have been aimed at documentation of the core elements that make up the most effective local TASC programs and the data collection necessary to manage and assess monitoring and referral of drug-dependent offenders. This documentation of field experience has improved communication among TASC-like programs and has resulted in a substantial growth in the number of requests for assistance, from both state and local case management.

Program description: This program will supplement the existing cooperative agreement with the National Association of State Alcohol and Drug Abuse Directors (NASADAD) to assist criminal justice agencies and block grantees. Using the TASC program as a individual case management model, technical assistance and training will be delivered on-site to current TASC programs to improve program delivery and to jurisdictions wishing to begin a TASC program in their area.

The TASC Program Brief will be further refined for concrete application, through the development and testing of a program assessment protocol, based on the critical elements and performance standards of the TASC program. Once tested, this assessment tool will be made available to the field, to confirm local program performance and to foster comparisons among sites. Other anticipated areas of priority include: Regional workshops to bring together state criminal justice planners and state alcohol and drug abuse planners to assist in better coordinating state programming for the drug dependent offender population; a model TASC client assessment instrument that provides the courts and the TASC administrator with useful information, documentation and data; training-of-trainers sessions for TASC consultants; TASC newsletter distribution to a growing list of interested individuals and organizations; and a national conference that brings together representatives from the criminal justice/drug treatment fields to review current information and coordinate future efforts.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with the National Association of State Alcohol and Drug Abuse Directors (NASADAD).

Award period: This award will be for 12 months.

Award amount: A supplemental award will be negotiated for up to $300,000.

References: The TASC Program Brief, Implementation Manual, Urinalysis Monograph, and Training Manuals—Trainer and Participant are available from the BJA staff member named below.

Due date: Application for the cooperative agreement will be due on or before January 31, 1989.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Drug Testing Technology/Focused Offender Disposition.

Goals/objectives: To continue to provide specific, practical assistance to local criminal justice decision-makers regarding the appropriate disposition of drug-using offenders, by providing and demonstrating specific guidelines for assessing offenders and available monitoring and treatment programs.

Background: Research conducted and underway by the National Institute of Justice, continues to support a number of solid findings about drug abuse and offending (e.g., drug use is a reliable predictor of pretrial misconduct, self-reports of drug use are not reliable, reliable technology is available). The same drug testing research which guides much of this discretionary program has highlighted certain areas of uncertainty and disagreement. The apparent success of monitoring as a deterrent to pretrial misconduct has led some to conclude that monitoring is an appropriate, general substitute for drug treatment. Others hold the view that monitoring, while an appropriate part of a treatment program, can promise no long term benefits. There is general agreement, however, regarding the dilemma faced by criminal justice decision-makers who deal with drug-using offenders. In the simplest terms, most judges have great difficulty distinguishing among offenders to determine those in need of and proper candidates for treatment. Similarly, having decided on a treatment condition or referral, most judges have great difficulty distinguishing among treatment programs (i.e., which are credible in general; which one is right for this offender).

This demonstration program is designed to address these questions directly. Over 80 decision-making instruments have been reviewed in light of recent and emerging research. From these sources a decision tool called the "offender profile index" has been developed for use at three competitively selected, demonstration sites, Birmingham, AL, Phoenix, AZ, and Miami, FL. These sites are just beginning to employ and assess the instrument. This continuation anticipates the

successful demonstration of the offender profile index at one or more of the sites and provides modest funding for continued demonstration at the one or two sites which show the greatest potential for leading the transfer of this technology.

Program description: This program will continue to document and demonstrate the options available to the criminal justice system in dealing with the drug using offender. This continuation will support additional demonstration at one or more of the selected jurisdictions, to document the most appropriate procedures and protocols for the determination of which offenders should be referred to monitoring, which should be referred to treatment, and what kind of treatment is indicated. The demonstration will also recommend the most appropriate criminal justice system role during the monitoring or treatment period. Appropriate national experts and organizations will be called upon to advise and recommend regarding essential site protocols and essential site data collection and analysis. Final products will include the results of a process evaluation, in monograph or Program Brief form, and documented indicators and protocols for effective disposition of drug using offenders. A supplement to the existing cooperative agreement will be negotiated, with the National Association of State Alcohol and Drug Abuse Directors (NASADAD), to accomplish the necessary oversight, administration and assistance. BJA will retain the authority for approval of experts selected, for continuation site selection criteria and for demonstration sites selected to continue.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with NASADAD. Criteria for continuation site selection will be developed by NASADAD and submitted to BJA for approval. BJA will make final site selection, in accordance with approved criteria.

Award period: This award will be for 12 months.

Award amount: One award, through a negotiated cooperative agreement, will be made, to include both oversight functions and site demonstrations. It is anticipated that one or two sites will be continued. The total award amount, including oversight and site assistance, is $800,000.

Due date: Application for the cooperative agreement from NASADAD will be due by February 24, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Adjudication Technical Assistance.

Goals/objectives: To provide state and local adjudication agencies with short-term assistance addressing a number of problem areas.

Background: The Adjudication Technical Assistance Program (ATAP) provides short-term technical assistance, training, resource development, and other services related to adjudication functions. ATAP assists state and local justice systems, in support of both BJA block grant recipients and those not receiving Federal funding, and undertakes other projects in support of the BJA adjudication program. Areas of program concentration include but are not limited to general court management issues, case processing delay reduction, jury utilization, pertrial services including use of drug testing, focused prosecution, and jail management capacity, with an emphasis on adjudication programs which enhance processing of drug abusers and offenders.

ATAP brokers requests and responds in the most appropriate way. In the majority of cases, assignments involve sending staff or consultants on site to do short term data collection and analyses and gather other information relevant to the problem giving rise to the request. A report including specific recommendations for addressing the problem is prepared for the jurisdiction and, in some cases, follow-up assistance is provided to help implement the recommendations made. However, ATAP does not underwrite the costs of implementation.

Other methods of technical assistance which have been effectively used include "hosted" visits of jurisdictional representatives making the request in another jurisdiction which has successfully handled the same problem; providing speakers or arranging special sessions for national-level professional court organizations' conferences; and, providing jurisdictions with technical assistance reports and other documents relevant to their problem without on-site work.

In addition to this type of assistance, the current ATAP develops and disseminates a newsletter and single-issue monographs, assists BJA in special projects of national interest, and provides follow-up to initiatives undertaken in the Adjudication Training Program.

Program description: The program has been operating successfully for approximately three years and has assisted over 150 jurisdictions through on-site and other types of technical assistance. To ensure BJA continues to provide the highest quality services through the program, the award made this year will be based on a Request for Applications, which will be issued in January 1989.

The new award will support a program which is essentially similar to that currently operating, with some possible redirection to avoid unnecessary overlap with newer projects which provide technical assistance in more narrowly defined adjudication areas. Priority will be given to providing assistance to jurisdictions that have problems related to drug abuse and offending and are not currently receiving direct aid and technical assistance from BJA through other ongoing discretionary programs. For example, jurisdictions interested in initiating a pretrial drug testing program that are not being assisted through the Drug Testing and Intensive Supervision Program or those interested in improving their pretrial services that are not being assisted through the Enhanced Pretrial Services Delivery Program would be eligible. Assistance which allows general court improvement, better jail capacity management, and more effective adjudication programs overall will also be provided, in recognition that generalized improvements in adjudication functions impact favorably on the fair and efficient processing of that substantial proportion of all offenders who are abusing drugs or are charged with drug offenses.

Eligibility and selection criteria: One award will be made following a competition based on a Request for Proposals (RFP) which sets forth program elements, eligibility and selection criteria, and other relevant information. While it is anticipated that this RFP will call for a program which operates in a manner very similar to that now ongoing, some modifications are likely based on the experiences of the current program and BJA's assessment of projected needs for such services during the upcoming award period. This RFP will be issued in December 1988 and will allow interested organizations at least 30 days to respond. To be placed on a mailing list to receive this RFP, write the BJA staff contact for this program listed below.

Award period: The award period will be 12 months.

Award amount: Up to $500,000 will be awarded as a cooperative agreement.

References: The Technical Reporter, vol. 2, nos 1 and 2 (ATAP newsletter, which can be obtained by writing or calling program staff at the EMT Group, Inc., 3615 Wisconsin Avenue, NW., Washington, DC 20016, 202/362–4183).

Due date: The RFP will specify the due date for proposals.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Program title: Differentiated Case Management for Trial Courts.

Goals/Objectives: To demonstrate the effectiveness of a new technique in court delay reduction which focuses on intensive case management as a means to expedite adjudication of cases, especially those cases involving drug abuse.

Background: General court delay reduction practices have been implemented over the past decade, achieving great successes in reducing backlogs and improving the timeliness of case disposition. A new technique, Differentiated Case Management (DCM), shows great promise to further promote the expeditious processing of cases and guide more effective use of adjudication resources during the life of the case. The program concept is to formally screen/assess cases to be litigated, divert those cases to special processing tracks based on such factors as complexity, and supervise those cases (especially those which require extraordinary coordination and use of court resources). Implicit in the success of this technique is the high level of planned coordination among personnel from the court, prosecutor and the public defender agencies.

Program description: In FY 1987, BJA intiated the Differentiated Case Management Program in which five jurisdictions (6 courts) received initial funding to begin operations. Those jurisdictions are Camden County, NJ; Berrien County, MI; Pierce County, WA; Ramsey County, MN; and Wayne County, MI. Emphasis is given to accelerate processing of drug abuse cases based on established processing tracks. In addition to the demonstration sites, the EMT Group, Inc., is providing intensive technical assistance during the start-up and operational phases. The National Center for State Courts is performing site and program assessments. Although the sites have been in operation for only four months, interim assessment indicates that the program concept is contributing to more effective case management and expediting processing. These sites will receive additional funding, based on continued success. EMT Group and the National Center for State Courts will receive additional monies to permit further technical assistance and assessment.

Eligibility and selection criteria: The five existing sites, EMT Group, and the National Center for State Courts are eligible for continued funding.

Award period: All awards will be for 12 months.

Award amounts: The demonstration sites will receive up to $75,000 each for a total of $350,000; EMT Group will receive up to $75,000 for technical assistance delivery; and the National Center for State Courts will receive up to $75,000 for continued assessment for a program total of $500,000.

Due date: All applications are due February 1, 1989.

Contact person: The BJA contact for additional information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: Enhanced Pretrial Services Delivery.

Goals/objectives: To improve the utilization and operation of pretrial services delivery agencies nationwide.

Background: The Enhanced Pretrial Services Delivery Program began in October 1988, addressing the operational aspects of pretrial services agencies, to: (1) Identify the basic elements of good agency operations, (2) highlight "enhanced" agencies, and (3) help jurisdictions improve their operations through a mix of technical assistance and direct aid. Early program tasks include conducting an extensive survey of existing agencies and/or units of adjudication agencies which are now providing some type of pretrial services. The survey will determine to what extent these agencies, e.g., do pre-release interviewing, make recommendations to the court, monitor released arrestees prior to trial, and identify diversion or treatment opportunities for arrestees. In addition to a report on the survey results, a number of monographs and other documents are expected to result from this initiative.

A Program Brief will describe a typical or adequate pretrial service delivery agency operation will be prepared and issued. The type of operation described in this document will be used in part as a baseline for identifying agencies above that level, i.e., as "enhanced" pretrial services delivery agencies. At least three enhanced agencies will be identified and used as host sites for other jurisdiction's pretrial services personnel. Some follow-up technical assistance will also be offered to the sites that are hosted and the enhanced sites themselves will receive some direct assistance to facilitate this hosting process and to begin documentation of their operations for the benefit of other jurisdictions.

Program description: The Pretrial Services Resource Center (PSRC) and the National Association of Pretrial Service Agencies (NAPSA) are working together on this project. The new award will allow these groups to schedule hosted visits for more jurisdictions, provide more extensive follow-up to thse hosted visits by intermittent technical assistance and other means, and continue producing monographs on relevant topics.

A key task during this second phase will be the careful documentation of the operations of the enhanced sites, so that individual program components which make these sites "models" can be more readily transferred to and implemented by other jurisdictions.

Eligibility and selection criteria: A supplemental award will be made to the Pretrial Services Resource Center.

Award period: The award will be for a period not to exceed 12 months.

Award amount: The Pretrial Services Resource Center will be awarded up to $300,000.

References: The Program Brief to be developed during Phase I of this program will be mailed to all persons/organizations who ask to be placed on the mailing list; contact the BJA staff member named below.

Due date: The application form PSRC will be submitted no later than May 1, 1989.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272–4601.

Program title: Large Court Capacity.

Goals/objectives: To promote systemic and permanent improvements in court operations, especially in large jurisdiction trial courts, so that these courts can provide fair and efficient adjudication of drug arrestees and offenders.

Background: In FY 1987 BJA and the National Center for State Courts (NCSC) began a major initiative to enhance performance of large jurisdiction courts, to meet the increasing numbers of drug and drug-related cases being referred for adjudication. Implicit in this program is the recognition that existing judicial and support resources can expeditiously handle drug arrestees by a more focused application and use of those resources. Research and evaluation into judicial administration conclude repeatedly that additional judges and support staff do not, in themselves, increase the pace or performance in case processing and that

increased resources may only contribute to existing inefficiencies.

Four major components of the program are: (1) Development and integration of trial court performance standards and recognition of those trial courts which demonstrate achievement of those standards, (2) analysis of caseflow activity in trial courts as a means to focus technical assistance resources on courts which exhibit significant delays in case processing (especially of drug cases), (3) a review of case characteristics to support a differentiated case management (DCM) approach to further expedite drug case processing, and (4) identification of model automated jury management systems to facilitate administration of jury practices/procedures.

Program description: Additional funding was provided during FY 1988 to complete work of the trial court performance standards component and begin a marketing strategy to integrate the standards in courts of large urban areas. This award will focus on continuing the Caseflow Management Resource Project. Under this project, the number of participating jurisdictions will be increased to at least 30 sites from which data will be collected and analyzed. Results from this project will be used to achieve a national perspective of caseflow management of our larger courts, deliver intensive technical assistance to courts which exhibit significant case backlogs and/or slow case processing times, and document those courts with faster times and facilitate technology transfer of their case management systems to other less efficient courts. The impetus is to institutionalize case management systems which are proven successful in addressing caseflow problems, in order to expedite drug and other serious cases.

Eligibility and selection criteria: A supplemental award will be made to the National Center for State Courts.

Award period: The new award will support an additional 12 months of program operation.

Award amount: Up to $450,000 will be awarded.

Due date: An application from NCSC will be due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Jay Marshall, Chief, Courts Branch, 202/272–4601.

Program title: The Impact of Drug-related Arrests on Criminal Courts of Limited Jurisdiction.

Goals/objectives: To examine how the increasing numbers of arrests for drug crimes and the increasing proportion of drug users among arrestees have effected the workload, procedures, and policies of courts of limited jurisdiction.

Background: There has been an increase in the numbers of drug-related arrests coming into our court system due both to increases in drug use and trafficking and increased targeting by law enforcement and prosecutorial agencies of these offenders. Some jurisdictions involved in ongoing BJA programs report that as many as 40% of all court filings are for drug offenses. Substantial evidence now exists also, coming from the Drug Use Forecasting (DUF) Program, a joint BJA/National Institute of Justice program, that 50–90% of all arrestees in major metropolitan (and even smaller) cities are drug users.

Despite the fact that nearly all arrestees are initially processed through some limited jurisdiction court (for probable cause hearings, bail hearings, some motions, and even plea acceptances), nearly all the ongoing studies on drugs and their relationship to criminal courts focus on the general jurisdiction or felony-level courts. There is a pressing need to identify the special problems which increased activities focused on drug crime have on these limited jurisdiction courts, because improper or ineffective processing at this point may detrimentally effect substantially more case outcomes than the numbers that are ever handled in the felony courts.

Program description: This new program will focus on the actual operations, policies and procedures, and case dispositions made by a number of limited jurisdiction criminal courts. The grantee will be asked to develop a program which includes analysis of case data, archival research, interviews of key court and other criminal justice system personnel, and other tasks appropriate to the subject, to provide both a national and site-specific perspective and a qualitative and quantitative analysis of what impact drug-related cases have had on these courts and how they are responding.

This program will be initiated by a competition, which will be held pursuant to a Request for Proposals (RFP) to be issued by BJA in March 1989. Within the broad constraints discussed herein and any additional requirements specified in the RFP, the exact focus of, methodologies for, and analyses to be performed for this program will be those suggested by the successful applicant. That is, the focus of the competition for this grant will be on which application presents the best approach to this examination within the resources available. Those organizations interested in competing for this grant should write the BJA contact noted below to be placed on a mailing list for the RFP.

Interested applicants should bear in mind that BJA is an action-oriented agency which is seekingf feasible approaches and solutions to problems occurring in the criminal justice system. Therefore, a key selection criteria will be how the applicant proposes to structure and report program findings and recommendations and how readily those findings and recommendations might be acted upon by limited jurisdiction courts to improve their operations overall and especially their handling of drug-related cases.

Award period: This new project will be funded for an 12-month period.

Award amount: Up to $250,000 is available for this program.

Due date: The due date for proposals will be specified in the RFP.

Contact person: The BJA contract for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Program title: Family Violence and the Role of the Family Courts.

Goals/objectives: To determine if family courts, given appropriate jurisdiction over adults involved in domestic violence, can effectively prosecute and adjudicate abusers in order to stop violence in the home, while providing better services to the family unit than are possible through criminal court intervention.

Background: The National Council of Juvenile and Family Court Judges (NCJFCJ) has been working since September 1987 with three family courts that have the jurisdiction to undertake criminal actions against spouse abusers. In these court, the program is developing, testing, and documenting a strategy for responding to instances of spouse abuse which has as its primary goal to intervene in a way which results in permanent cessation of that violence. Since a criteria for cases included in the program is that the domestic violence occurred in a home where children reside, a secondary goal is to foster a situation which preserves the stability of family relationships which are likely to continue even if the abuser and victim do not want to continue their relationship (e.g., divorced parent-child in custody of other parent).

The program seeks to coordinate criminal justice system and public and private service agencies' actions to provide a range of interventions, including criminal prosecution and sanctioning of the abuser, protection of

and necessary services for the victim of abuse, identification and response to other types of violence or substance abuse which might be occurring in the home, and provision of longer term assistance/treatment/services to abuser, victim and children in the home. Consistent with this concept of developing a unified approach to each individual family violence case involving both the criminal justice system and service agencies' actions is the potential of the family courts to coordinate or combine all actions pending in the court system relevant to anyone in the same home or family. Providing this coordination has become another objective of the program.

The progress in implementation of program goals by the three sites participating in the program (Quincy MA, Portland, OR, and Wilmington DE) is being documented by the Center for Juvenile Justice, the research and evaluation office of NCJFCJ.

Program description: While significant progress has been made in achieving program goals, the complexity of trying to intervene effectively in family violence situations requires a long-term effort. Complexity arises where violence by abuser to the same victim has occurred over a long period and has become a way of life, where multiple violence (e.g., spouse and child abuse) may be occurring, where the fear of losing the children to state agency custody inhibits the victim from pursuing court action against the abuser, and where a number of civil and criminal processing options are not only available but may in fact have led to pending actions in several courts in the same jurisdiction involving one or more members of an entire family group. This new award will provide supplemental support for this program, to allow continuing development and assessment of the feasibility of the approach to family violence intervention now being taken in the three participating sites.

Eligibility and selection criteria: The current grantee, the National Council of Juvenile and Family Court Judges, will receive a supplemental award to the cooperative agreement which supports this program's activities.

Award period: The new award will cover a period of up to 12 months.

Award amount: Up to $300,000 will be awarded.

Due date: An application from NCJFCJ will be submitted within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Linda McKay, Program Manager, Courts Branch, 202/272/4601.

Subpart V—Corrections

Program title: Prison Capacity Demonstration.

Goals/objectives: To assist states to review corrections policies and to establish a balanced corrections system, utilizing commissions or task forces representing all three branches of government.

Background: This program is a continuation of a technical assistance and demonstration program initiated in 1987 to assist state corrections commissions and task forces. The Bureau of Justice Assistance initiated a fifteen-state Prison Capacity Program under a special Congressional authorization to assist state policy makers in developing cohesive correction policies.

Program description: The program provides seed money and technical assistance to state commissions or task forces made up of representatives of the three branches of government or to legislative committees revising corrections policy. Each of the commissions or task forces is considering a wide range of corrections alternatives including prison capacity and updated inmate population projections, distribution of populations between state institutions and jails, and a wide range of alternative sanctions including expanded community corrections options. Technical assistance is provided under a grant to the National Council on Crime and Delinquency (NCCD).

Eligibility and selection criteria: This funding will extend the work of selected state commissions for an additional six to twelve months and continue technical assistance through 1989. Because of funding limitations, no new states will be added to the currently funded sites, although technical assistance will be available.

Award period: The award to NCCD and contracts with sites will be for periods of up to 12 months.

Award amounts: Up to $250,000 is earmarked for this program to be distributed as follows: $150,000 for continuation funding in five or six states; $100,000 for technical assistance and training activities. Currently funded states could receive supplements of $10,000 to $25,000 by submission of amended work plans.

The FY 1989 funds will be awarded to the current technical assistance coordinator, National Council on Crime and Delinquency, San Francisco, which will distribute funding to the states under direction of the Bureau of Justice Assistance.

Due date: States currently participating in the program may submit supplemental workplans to BJA and the National Council on Crime and Delinquency at any time within 90 days of the completion of their current grants. A submission date for the application from the technical assistance provider will be negotiated with NCCD.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272-4605.

Program title: Shock Incarceration Treatment Enhancement for Drug Offenders.

Goals/objectives: To provide funding for up to two demonstration sites to develop or enhance drug treatment for drug dependent offenders within a shock incarcerations or boot camp program.

Background: The development of alternative, intermediate sanctions for non-violent, first-time youthful, drug offenders and drug-dependent offenders is a crucial element in the nation's drug control efforts. Shock incarceration is a relatively new alternative sanction which provides a choice between traditional prison incarceration and supervised, community-based release, predominantly for the young, non-violent, first offender, age 18–25, who was a short sentence. These programs operate under several names; "shock incarceration" and "boot camp" are probably the most common. The specific components of these programs vary including activities such as work, community service, education and counseling. Some programs require intensive supervision upon release.

However, one similarity among all programs is a highly structured, military-type environment where offenders are required to participate in drills and physical training, all of which is directed by staff in a military, or boot camp, atmosphere. The sentence lengths are usually shorter than traditional detention and are seen by proponents as cost-effective means of reducing prison overcrowding. Proponents also argue that the short-term, demanding and rigorous boot camp component of the programs will be rehabilitative and reduce recidivism.

Program description: The criminal justice system's expanded efforts to apprehend and prosecute both the drug trafficker and drug user requires that new alternative sanctions be established. This program will demonstrate the integration of drug treatment components into shock incarceration programs, to provide an opportunity to test the feasibility and

effectiveness of expanded offender treatment and counseling using a variety of drug treatment modalities for youthful drug and drug dependent offender.

Eligibility and selection criteria: This is a competitive program. However, applications from existing shock incarceration-type programs to establish or enhance drug-dependent offender treatment efforts will receive funding priority.

Award period: Grants will be for 12 months.

Award amount: Two grants will be awarded for approximately $250,000, for a program total of $500,000.

Due date: Applications should be submitted no later than March 31, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Correctional Industry Information Clearinghouse.

Goals/objectives: To support improved operations and expansions of state correctional industries, both as a means to reduce inmate idleness and to develop revenues for a variety of correctional and social purposes.

Background: This project provides publications, technical assistance and special research for state prison industries. It is a continuation of a clearinghouse for state prison industries developed at the American Correctional Association (ACA) in 1986.

Program description: ACA staff handle technical assistance requests on a wide-range of prison and jail industry issues, including legislation, personnel procedures, marketing and sales, and organization and management, as well as joint ventures with the private sector. Requests are handled through document retrieval and reproduction, special research, and operation of CI–NET, the automated information system. Periodic bulletins on topics of special interest are distributed to all state prison and jail industries.

Eligibility and selection criteria: The American Correctional Association will submit a continuation application.

Award period: This award will extend the current project for a period of 12 months, through March, 1990.

Award amount: Up to $175,000 will be awarded to the American Correctional Association.

Due date: An application for continuation funding will be due by February 15, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Strategic Planning for Prison Industries.

Goals/objectives: To assist state correctional industries to develop long-range growth and marketing plans for the expansion of their operations.

Background: This is an ongoing program which provides technical assistance and small grants to state and local correctional industries to complete long-range business plans.

Program description: This program will provide technical assistance to state correctional industries to expand their business operations. The emphasis will be on long term strategic planning, defining business objectives, growth markets, and means of financing growth. Small sub-grants of $10,000 to $25,000 per state may be approved by BJA through the Technical Assistance Coordinator, the Institute for Economic and Policy Studies-Correctional Economics Center.

Eligibility and selection criteria: This will be a continuation grant to the Institute for Economic and Policy Studies. Two small sub-grants will be authorized by BJA on a competitive basis. BJA will submit a separate notification to all state and metropolitan correctional agencies in early 1989. The criteria will be detailed in that special announcement.

Award period: This supplement will fund the project for 12 additional months, through February, 1990.

Award amount: Up to $175,000 will be awarded to the Institute for Economic and Policy Studies, earmarked to be distributed as follows: Approximately $50,000 for two new state prison or metropolitan jail industry planning studies; $75,000 for short-term technical assistance to prison and jail industries and regional meetings; and $50,000 for administration and special studies at the direction of BJA.

Due date: The Institute for Economic and Policy Studies will submit an application for continuation funding by March 15, 1989.

Contact person: The BJA contact for additional information is Nichols Demos Chief, Corrections Branch, 202/272–4605.

Program title: Automation of the Probation and Parole Interstate Compact.

Goals/objectives: To initiate a pilot automated system to facilitate the transfer process for probationers and parolees moving between states under the recently revised Interstate Compact. The goal is to increase public safety and accountability of probationers and parolees, especially for offenders with addiction problems, through a rapid transfer process.

Background: Current estimates are that we are approaching 100,000 transfers of probationers and parolees between states each year. These transfers are made under the terms of the Interstate Compact, which was recently revised to include automated transfers. An extensive survey of the states revealed that the current transfer process is slow, burdensome and unwieldy, often leaving probationers and parolees without supervision for months. The National Institute of Corrections funded a project to revise the Interstate Compact, and that has been completed.

Six states with high volumes of transfers have volunteered to test and evaluate a computerized system of transfers. The six states are: California, New York, New Jersey, Pennsylvania, Florida and Texas. The project has been carefully planned over the past two years by the Interstate Compact Association Information Network Committee with staff from the Council of State Governments. Technical assistance was provided by SEARCH Group, Inc.

Program description: The program will be conducted by the Probation and Parole Compact Administrators Association, with staff and financial management by the Council of State Governments, the Secretariat for the Association. One of the objectives is to insure proper supervision of higher risk drug/alcohol dependent offenders, and their entry into proper treatment programs. Six states are ready to test the automated transfer system. After the evaluation other states may be added to the system.

The Council of State Governments' MicroVAX computer facility in Lexington, Kentucky, will serve as the central "Mailbox" for the transfers. Data record exchange will be supplemented by fax machines. The "Mailbox" would be accessed by the pilot states from dedicated personal computers and modems secured through project funds and maintained at the states' expense.

Eligibility and selection criteria: The project will be implemented by the Probation and Parole Compact Administrators Association, through its Interstate Compact Association Information Network Committee. Staff and financial management will be provided by the Council of State Governments.

Award period: This will be for 12 months.

Award amount: Up to $230,000 is earmarked for this project.

Due date: An application is due from the Compact Administrators Association by January 15, 1989.

Contact person: The BJA contact person for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Intensive Supervision for Drug Offenders (Probation and Parole) Training and Technical Assistance.

Goals/objectives: To provide a minimum of eight intensive training institutes to states or jurisdictions that are ready to implement an intensive supervision for drug offenders project. Training institutes will be provided on planning, implementation strategies, and problem-solving. It is anticipated that approximately 16 jurisdictions will be reached through these training institutes.

Background: Prison crowding is, and will continue to be, the most pressing issue facing state correctional facilities. Intensive supervision is one of the alternatives available to the corrections system to help alleviate crowding. Intensive supervision, if properly implemented, can offer some cost and bed saving respite for crowded institutions. Some jurisdictions could benefit from intensive training that will provide assistance in the implementation phases of program development.

In fiscal years 1986–1988, BJA funded an Intensive Supervision Demonstration Program. This Program provided funding for 10 demonstration sites, national technical assistance, intensive training, and an independent evaluation. Six out of the 10 demonstration sites were specifically targeted to provide services to drug offenders.

The National Council on Crime and Delinquency (NCCD), in conjunction with Rutgers University, has developed and utilized a very successful training and planning format for the BJA intensive supervision demonstration program. This basic format will be used for this new effort, and the experience and expertise of NCCD and Rutgers will be brought together to implement this program.

Program description: This program has two components: (1) The provision of specialized intensive training seminars to provide management and operational training focused on program development, planning, implementation strategies, and problem-solving; and (2) the provision of a comprehensive technical assistance package that will provide on-site consultation to ensure successful program operation. Projects must evidence a commitment to emphasize urinalysis, treatment, and surveillance.

This program will provide all training costs, travel, and per diem directly related to attendance at the training sessions. No project-related costs will be paid out of this grant.

Eligibility and selection criteria: Interested states or jurisdictions must meet four criteria prior to selection for participation in training institutes:

- Priority will be given to those states that are involved in the Prison Capacity or the Department of Corrections Drug Treatment Strategy Programs. Other jurisdictions will be considered on a space available basis. Some weight will also be given to geographic distribution of interested jurisdictions.
- This training is for those jurisdictions ready to implement an Intensive Supervision project. It is expected that the Project Director and approximately 3-4 additional staff members who will be working on this program will take part in these training seminars. Applicants must show evidence that they will be ready to begin implementation of a program immediately after the first training session.
- All intensive supervision projects involved in this training must either show evidence of an existing treatment component or a willingness and funds to develop a treatment component.
- States/jurisdictions must indicate a willingness to participate in both training institutes.

Requests will be reviewed by NCCD and BJA, with final approval for site selection made by BJA.

The National Council on Crime and Delinquency, building upon their specialized experience with BJA's 10 demonstration sites, will receive a grant to provide technical assistance and training services.

Award period: This program will extend for 12 months.

Award amount: Up to $150,000 has been earmarked for this national training and technical assistance grant. All training, travel and per diem costs will be paid for selected sites via voucher submission to NCCD.

Due date: Completed application from NCCD is due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605. For those jurisdictions interested in the training institute, please contact Doug Holien, NCCD, Director of Research, Technical Assistance and Programs, 608/274–8882, to express interest and obtain a copy of eligibility criteria.

Program title: Coordinated Interagency Drug Training and Technical Assistance.

Goals/objectives: To coordinate and enhance the parallel efforts of probation/parole officers and drug treatment practitioners through cross-training. To develop activities that will expand networks and improve community management of the drug-dependent offender.

Background: Coordinating services between the criminal justice and treatment systems is a complex process. Each system tends to define client goals and the manner in which the goals are accomplished differently. Desired behavioral outcomes for the criminal justice system focus on recidivism, whereas the treatment system is more interested in treatment retention and drug-free days.

Drug dependent offenders require close community supervision. If such individuals are sentenced to probation or released from prison on parole without a strong monitoring component that promotes socially acceptable behavior and provides treatment for drug dependency, public safety may be endangered and judicial intent thwarted.

Initiating comprehensive drug programs for offenders requires flexibility in policy, strategy and technology. Cooperative planning by probation/parole systems and drug treatment systems is essential to this process. An important step in cooperative planning is to share and in some cases consolidate, information and resources.

Full case management programs for offenders, emphasizing reduced case loads and combining strong monitoring, sanctions and community-based services, is certain to be a more effective intervention strategy than simply assuming that a jail term will "cure" the deviant behavior and accompanying drug dependency.

Highly structured, daily supervision for drug-dependent offenders is essential to protect public safety. Frequent drug testing, random home visits and collateral contacts with family and employers work in tandem with drug treatment and employee assistance. In addition, a system of prompt positive and negative sanctions work most effectively when probation/parole and treatment work in a coordinated effort with the individual offender.

Criminal justice and drug treatment agencies have traditionally had an almost adversarial relationship because of "turf" issues and a blurry line dividing roles and functions.

Recognizing the potential pitfalls and working to avoid them are two vital actions that are often overlooked. Cooperative interagency agreements, joint training, and efforts to clarify roles and functions can significantly enhance the chances that both systems' goals will be reached.

Program description: The Coordinated Interagency Drug Training and Technical Assistance Program, in its entirety, will develop and implement joint training for both probation/parole officers and for treatment practitioners. Two national organizations representing the two fields will work together: The National Association of State Alcohol and Drug Abuse Directors (NASADAD) and the American Probation and Parole Association (APPA). Their cooperative efforts will help garner support from their constituents and will ensure that the project's approach, materials and use of language are appropriate. Training activities will be conducted under the auspices of a Justice/Treatment Coalition composed of nationally-known experts and representatives from both organizations.

The full project plan for the program includes: Determining the specific problems and issues to be addressed and developing a curriculum which matches the joint needs of the two fields; conducting training of the trainers who will teach the material; conducting 60 two-day seminars (at least one in each state) which train probation/parole and treatment personnel jointly; providing follow-up technical assistance as needed; evaluating a portion of the training 3 to 4 months later; and preparing and disseminating a Program Brief outlining the training's critical elements and guiding principles.

However, in FY 1989, BJA will fund only the following activities: Start-up and needs assessment, curriculum development and teacher training; pilot training, site evaluation and analysis of impact; plan for completion of projects.

Eligibility and selection criteria: This award will be made to NASADAD and the Council of State Governments, APPA based on a negotiated cooperative agreement.

Award period: The period of performance for the full project is estimated to be 24 months. However, BJA will fund only 12 months of activity during FY 1989.

Award amount: Up to $500,000 is available for this award.

Due date: Application for the cooperative agreement will be due by February 15, 1989.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: BJA/Public Health Service Drug Treatment Intervention.

Goals/objectives: To develop a model substance abuse program that will incorporate the needs of the corrections system with the services of the U.S. Public Health Service (PHS). This program will provide substance abuse diagnosis and treatment referral services to local and county jail inmates and offenders on Intensive Supervision by PHS community and migrant health centers. A national conference of public and correctional health care providers will result from this effort.

The objectives are to:

- Provide a continuum of health care *and* substance abuse treatment to offenders, and
- Foster the development of a network of criminal justice and health care agencies to better serve the substance abuse/treatment needs of jail inmates, probationers, and parolees.

Background: Although some public health centers are providing direct health services to correctional agencies, few are actually working together. This program, therefore, presents a logical mechanism for integrating community and correctional facilities interests in substance abuse and treatment. Inmates, probationers and parolees return to their communities with untreated substance abuse problems which continue to cause medical problems for the individual as well as societal problems for the community in general. Under an existing Interagency Agreement with PHS, it has been mutually agreed to enter into a joint venture to develop a model substance abuse/intervention program(s) within the correctional system.

Program description: This program is divided into the following two components:

- *Program Planning and Implementation:* A number of host sites will be identified by BJA and PHS, based on locations of existing local health centers and location of correctional facilities. Facilities will be contacted to determine interest. Public health and correctional officials will be working together to plan and implement program goals, develop appropriate policies and procedures to integrate correctional needs with health care services. A Program Manual/Guidebook will be developed.
- *National Conference:* Based on documentation and expertise gleaned from program operation, a joint national conference on substance abuse for public health and correctional health care providers will be conducted in the latter portion of this program effort.

Eligibility and selection criteria: An award will be made to Correctional Research Institute, based on their existing working relationship with PHS and existing available consultant network established under a previous grant. As the national program coordinator, Correctional Research Institute will be responsible for:

- A design for joint administrative oversight and provision of onsite consultation and information dissemination to assist in the development and implementation of selected sites;
- A design for implementation of the joint national conference; and,
- A design for joint evaluation which provides some impact assessment.

Award period: This will be a 12 month effort.

Award amount: Up to $150,000 is earmarked for this program.

Due date: The application from the Correctional Research Institute is due no later than March 31, 1989.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Drug Treatment in a Jail Setting Demonstration.

Goals/objectives: To assist local jails and community corrections agencies to improve their drug screening and treatment services, through the continuation funding of one of the model jails funded in FY 1987. The emphasis of this program is on drug treatment in larger metropolitan jails, but training and clearinghouse services will be provided for smaller jails as well.

Background: In FY 1987, the American Jail Association (AJA) proposed a national research and demonstration program to assist jails and community corrections agencies in improving screening and treatment for drug offenders. In FY 1987, BJA funded two national models, and in FY 1988, funded one additional site. These projects are located in Pima County, AZ; Hillsborough County (Tampa), FL; and in Cook County (Chicago), IL.

Program description: This program will be continued to provide for the following components:

- Continuation funding of one existing pilot project at approximately $350,000. The model site will cooperate in the transfer of project components from the model jail to others jails through documentation and host visits.
- Transfer of project components from the other existing model jails to

other metropolitan jails through documentation and host visits; and,

• Continued research updates on success in reducing drug abuse and recidivism rates through a combination of institutional and community treatment.

Eligibility and selection criteria: For the pilot project to be continued eligibility criteria include: Level of integration of jail and community treatment components; comprehensiveness of the drug treatment component; strategy for aftercare; support from local correctional and drug treatment officials; strategy for enlisting the cooperation of corrections officers and overcoming resistance to treatment programming; and local funding sources committed to the project. Projects are strongly encouraged to combine block grant and discretionary funds to the extent possible. The American Jail Association will continue to be the National Program Coordinator for this program.

Award period: The new award will extend the project for 12 months.

Award amount: Up to $460,000 is earmarked for this program, to be distributed as follows: $110,000 for a grant to the American Jail Association for administration, technical assistance, and the research component and $350,000 to continue one jail project.

Due date: Applications must be submitted to BJA by the AJA and by the site to be continued no later than February 1, 1989.

Program contact: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Technical Assistance to Corrections Agencies.

Goals/objectives: To provide a range of site-specific technical assistance and training in support of new block grant and non-block grant projects in correctional institutions and in community corrections agencies; and to support BJA-initiated special projects.

Background: In FY 1987, BJA funded Corrections Research Institute (CRI) to provide a range of site-specific technical assistance and training efforts in support of new block grant and non-block grant projects in correctional institutions and in community corrections agencies. This program was developed with the recognition that state departments of corrections, local jails, and community corrections agencies would be implementing a wide range of drug screening, drug treatment, and rehabilitation projects with block and non-block grant funds. It was recognized that many of these new or expanded drug-related projects could have a significant impact on the operations of corrections agencies, and that there would be a substantial need for technical assistance and training to support these projects. Six to eight regional training seminars on drug-related topics were scheduled, and in addition, twenty-five of these grant funds were set aside for special projects.

Program description: A supplemental grant will be awarded to Corrections Research Institute to continue providing technical assistance and training activities. It is projected that another six regional or State seminars will be implemented on special topics related to drugs, such as special handling of drug dealers, eliminating drugs in the institution, model personnel and job descriptions, and community supervision. It is also projected that up to 60 additional on-site technical assistance assignments will be completed, covering drug treatment, organization, management, and screening instruments.

Implementation will continue to be delivered primarily on a broker basis, i.e., maximum use will be made of exprienced administrators, practioners, and consultants. Twenty-five percent of grant funds will again be earmarked for special projects at the direction of BJA.

Eligibility and selection criteria: One national scope grant will be awarded to Corrections Research Institute to continue their present efforts. CRI must submit a Federal SF–424 application which must include a complete budget, efforts to be continued, up-to-date staff capabilities, up-to-date consultant capabilities, any changes in present operation.

Award period: This award will be for 12 months.

Award amount: Up to $250,000 is earmarked for this project.

Due date: An application is due at BJA no later than January 15, 1989.

Contact person: The BJA contact for additional information is Kim C. Rendelson, Program Manager, Corrections Branch, 202/272–4605.

Program title: Comprehensive State Department of Corrections Treatment Strategies for Drug Abuse.

Goals/objectives: To reduce recidivism rates of major drug using offenders by a range of drug treatment programs and community supervision and treatment.

Background: This program was initiated in FY 1987 to assist state departments of corrections to expand and upgrade drug treatment and rehabilitation activities in all state institutions. BJA selected Narcotic and Drug Research, Inc. (NDRI), as the national program coordinator to assist with technical assistance and training. Six states were selected for Phase I Planning contracts for the first year: Connecticut, New York, Delaware, Florida, Alabama, and New Mexico. All six states are now in the implementation phase and four new states were added to Phase I in FY 1988: New Jersey, Oregon, Washington, and Hawaii.

Program description: The major objective is to develop a range of model state drug treatment activities including: Therapeutic communities, drug resource centers, drug education, and self-help groups that can be integrated into existing and proposed institutions. An ancillary objective is to train corrections and treatment staffs in the latest techniques for drug treatment. Lastly, the program has an evaluation objective, whereby both the treatment process and the impact will be assessed.

Eligibility and selection criteria: No new Phase I planning states will be added to the program at this time. Only those states presently working through their planning phases are eligible to submit applications for the Implementation Phase. NDRI will receive a supplemental award to continue its technical assistance to participating sites. Site applicants must submit completed SF 424 applications to BJA upon completion of their comprehensive plan. The current planning states should be ready for implementation projects in the Spring or Summer of 1989.

Award period: All implementation grants will be for a 12 month period. The NDRI supplemental award will be for an additional 12 months.

Award amount: Up to $1,800,000 is earmarked for this program to be distributed as follows: $1,300,000 for implementation grants to those states that have completed Phase I with an approved plan by BJA and NDRI and $500,000 is set asisde for continuation of technical assistance and training through NDRI.

References: Information packets on prison drug treatment programs are available from NDRI upon request. Address requests to Lenny Posner, Narcotics and Drug Research, Inc., 3d Floor, 11 Beach Street, New York, NY, 10013.

Due dates: Implementation applications are due in the Spring or Summer of 1989 from those current Phase I states that complete their implementation plans. NDRI's supplemental application is due by February 1, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Program title: Probation and Narcotic Interdiction National Training Program.

Goals/objectives: To reduce the incidence of drug abuse and subsequent arrests or revocation of offenders on probation or parole. The objective is to provide probation and parole line officers with the knowledge and skills to detect drug use, assess severity, and learn techniques of surveillance, testing, and intervention.

Background: This national scope research and training program was developed by the American Probation and Parole Association and the National Association of Probation Executives to strengthen the ability of probation and parole officers in detecting and treating drug abuse. The grantee is documenting and disseminating successful models of drug screening, intervention and treatment, and the means of strengthening relationships with community treatment agencies. The project is staffed by the Council of State Governments, which provides Secretariat services to the American Probation and Parole Association.

Program description: This program is divided into three phases:

- National search and documentation of successful probation/parole drug surveillance and intervention techniques, and successful models of probation/parole coordination with community treatment agencies (completed);
- Development of a Training Manual for Probation/Parole agencies; and
- Seven training seminars for approximately 250 Probation Executives and Training Directors (training the trainers). Successful program models will also be disseminated to state legislative and executive officials.

Continuation funding will allow training of an additional 300 probation/parole administrators and trainers in 1989 through an additional six or seven seminars.

Eligibility and selection criteria: This will be a continuation grant to the Council of State Governments, as Secretariat to the American Probation and Parole Association and the National Association of Probation Executives.

Award period: The current grant will be extended for a period of 15 months.

Award amount: Up to $250,000 is earmarked for this program for six or seven additional regional seminars. One of the seminars may take place at the APPA annual institute.

Due date: An application for extension of this program will be due by March 1, 1989.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–1605.

Program title: Private Sector/Prison Industry Enhancement Certification Technical Assistance and Training.

Goals/objectives: To provide technical assistance and training to current certified agencies and interested organizations and applicants of the Prison Industry Enhancement Program to assist in complying with the nine mandatory program requirements for participation. These certified projects represent prison industries operated at free-world standards and paying prevailing wage rates under special legislation authorized by the Congress. The benefits received are the availability to sell prison-made goods in interstate commerce and to federal agencies.

Background: 18 U.S.C. 1761 implements the Prison Industry Enhancement Program originally authorized within the Justice System Improvement Act of 1979. The program provides exemption from Federal constraints on the marketability of non-Federal prison-made goods by permitting the sale of these products in interstate commerce and to the Federal Government. Up to 20 non-Federal prison industry projects may be certified for this exemption when their operation has been determined by the Director of the Bureau of Justice Assistance to meet statutory and guideline requirements. The certified projects are designed to place inmates in a realistic working and training environment enabling them to acquire marketable skills, thus potentially increasing the possibilities for successful rehabilitation and the chances for meaningful employment upon release. Tensions are reduced in participating institutions as idleness decreases. Project workers alleviate some of the costs of incarceration by contributing room and board and family support payment, and becoming taxpayers, and victims of crime are compensated for their loss.

Program description: This project will be a continuation of the present technical assistance and training cooperative agreement with the American Correctional Association, to support the Private Sector/Prison Industry Enhancement Certification Program. The Program requires that state and local units of government comply with the following legislative-mandated conditions and administrative authority: Statutory authority to administer prison industry program; contributions to victims compensation or victim assistance programs; consultation with organized labor; consultation with local private industry; payment of prevailing wages; free worker displacement; voluntary participation; worker compensation; and private sector involvement.

The cooperative agreement shall provide for the use of expert personnel from previously certified projects who have demonstrated skill in achieving administrative, correctional and business objectives. These experienced prison industry officials will help upgrade other project management systems, assist in resolving operational problems, and enhance communication and sharing among project participants. Depending on interest expressed by state and local governments, up to 20 on-site technical assistance visits are anticipated.

Eligibility and selection criteria: This continuation award will be made to the American Correctional Association as a cooperative agreement.

Award period: The supplemental award will be for 12 months.

Award amount: Up to $265,000 is earmarked to supplement the Association's current technical assistance and training project.

Due date: An application from the American Correctional Association will be due by February 28, 1989.

Contact person: The BJA contact for additional information is Louise S. Lucas, Program Manager, Corrections Activities, 202/724–8374.

Program title: Treatment Outcome Study.

Goals/objectives: To participate in a five-year "Drug Abuse Treatment Outcome Study" (DATOS) funded by the National Institute on Drug Abuse (NIDA).

Background: In early FY 1989, NIDA will award a five-year national study, similar to, but in greater depth than, the "Treatment Outcome Perspectives Study" (TOPS). The new DATOS study will measure the effectiveness of drug treatment and investigate the treatment process. One measure of client change to be examined is criminal behavior. Data will be collected on an estimated 20,000 clients from approximately 32 different treatment programs in two one-year admission cohorts.

BJA's participation in the initial phase of the project will help to ensure that the questions and analyses for the criminal behavior factor address the interests of BJA and that special studies will

examine specific factors such as the extent of criminal behavior when the Treatment Alternative to Street Crime (TASC) program is involved in the treatment process.

Program description: Under an Interagency Agreement, negotiated with the National Institute on Drug Abuse, BJA will provide support for additional resources to the DATOS project to aid in the design of the criminal behavior analyses and to specifically examine the extent of criminal behavior when the TASC program is involved in the treatment process. Information gathered through this effort will be made available to the states to guide state and local criminal justice formula grant allocations for continued technology transfer.

Eligibility and selection criteria: An Interagency Agreement will be negotiated with the National Institute on Drug Abuse.

Award period: This award will be for a period of 12 months.

Award amount: One award will be made in the amount of $60,000.

References: National Institute on Drug Abuse, Request for Proposal No. 271–89–8233, "Drug Abuse Treatment Outcome Study." June 30, 1988, is available from NIDA c/o Parklawn Building, 5600 Fisher's Lane, Rockville, MD 20857.

Due date: The Interagency Agreement date will be negotiated with NIDA.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: National Drug Treatment Training Institute.

Goals/objectives: This project initiates a National Drug Treatment Training Institute to train staffs from prisons, jails and community drug treatment agencies. The objectives are: (1) To support staff training for prison and jail projects participating in BJA demonstration programs; (2) to expand community drug treatment agencies that serve correctional populations as rapidly as possible.

Background: There is a growing commitment in correctional agencies to provide improved drug treatment services, to break the drug/crime connection, and to reduce recidivism rates. The greatest impediment to this goal is the lack of trained corrections and drug treatment staffs. The severe lack of substance abuse training resources within corrections and treatment communities required a national drug treatment training institute. Ten states are now participating in BJA's Corrections Drug Treatment Program, and within two years that number is expected to double. There is an equivalent situation with metropolitan jails.

Program description: A curriculum will be tested, refined, and amended as the project evolves. The Institute will include workshops and courses, intensive therapeutic community training, regional training workshops, and internships at various sites throughout the country. Training will be developed for corrections policy-makers, administrators, prison and jail line staffs, and community treatment staffs and aftercare supervisors. Approximately 350–500 personnel will be trained during the first year of operation. The project will develop manuals and related training materials as necessary for use of the participants and for replication purposes.

This project will allow for the testing and refinements of a national drug treatment training curriculum, and lead into the national institute authorized under section 6292 of the 1988 Act, when funds are appropriated for that purpose.

Eligibility and selection criteria: An interagency agreement will be negotiated with the National Institute of Corrections (NIC), Bureau of Prisons.

Award period: The project will be for a period of 12 months.

Award amount: Up to $300,000 has been earmarked for this project.

Due dates: An interagency agreement date will be negotiated with NIC.

Contact person: The BJA contact for additional information is Nicholas Demos, Chief, Corrections Branch, 202/272–4605.

Subpart VI—Information Systems

Program title: Operational Systems Support Technical Assistance and Training.

Goals/objectives: To enable state and local criminal justice agencies to determine systems needs, establish systems requirements and design or procure cost-effective, integrated information and management systems.

Background: This project implements BJA's technical assistance and training program, for state and local criminal justice agencies engaging in the necessary planning, organizational and analytical steps to implement operational information systems and workload management systems. The benefits of progress in information and management technology have not been universally shared. Small to medium sized agencies, which make up the vast majority of criminal justice agencies, often lack the resources to identify and employ available technology. This program will be designed to reach these agencies, directly and through their state and national organizations.

Past technical assistance and training programs have included the conduct of training sessions, the provision of documentary and on-site technical assistance, the generation and dissemination of guidance documents, and the generation and dissemination of generic systems. This program, especially the provision of on-site assistance, will function under strict priorities, with states lacking and in need of automation receiving priority attention.

Program description: A cooperative agreement will be negotiated with SEARCH Group, Inc. A comprehensive plan for the progam will be submitted to BJA for approval. This plan shall recommend priority areas (and schedules) for training and other forms of technical assistance and support. The approved plan and schedule will be published and will govern activities under this program.

Eligibility and selection criteria: The cooprative agreement will be negotiated with SEARCH Group, Inc., in accordance with the priority and guidance provided by the Congress.

Award period: This award will be for 12 months.

Award amount: The award will be up to $400,000.

Due date: An application from SEARCH Group will be due to BJA within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: National Criminal Justice computer Laboratories and Training Centers.

Goals/objectives: To provide specific, practical assistance and training to state and local criminal justice agencies, in automating functions, in implementing available systems and in comparing technologies and selecting the most cost-effective technology for local application.

Background: This program provides support to the joint efforts of the Criminal Justice Statistics Association (CJSA) and SEARCH Group, Inc., in the conduct of the computer laboratories and training centers. This program is designed to respond to specific, information systems needs of criminal justice agencies. Most criminal justice agencies, and especially small to medium-sized agencies, lack the necessary resources and expertise to: Maintain information on available,

public domain systems; investigate new technologies; develop criminal justice applications for existing technology; compare available technology and select the most cost-effective hardware and software for local systems; and provide necessary, technical training for their employees, to meet local and national information requirements.

Drawing upon the experience of the original laboratory and training center, operated by SEARCH Group, Inc. in Sacramento, CA, and the Washington DC facility, operated jointly by CJSA and SEARCH, this program will provide support for both facilities to purchase and operate essential equipment and software and to receive and maintain equipment and software donated by private vendors. The laboratories will house each center's publications library, the library of public domain and private sector software, and the clearinghouse of computer vendors and users. They will provide sites for CJSA and SEARCH to assist users in the evaluation of software and hardware, and in the selection of appropriate products to meet their needs. They will also serve as sites for vendors to demonstrate their products to potential users and as sites for demonstrations of public domain software. The training centers will continue to provide programs focused on: decision support; policy analysis; automation needs of criminal justice agencies; and, the operation and use of public domain software, such as "DA's Assistant" for prosecution management and "Lock-up" for jail management.

Program description: A cooperative agreement(s) will be negotiated with the Criminal Justice Statistics Association and SEARCH Group, Inc. This program will provide for the continuing development and implementation of the National Computer Laboratories and Training Centers for the Eastern and for the Western United States. More specifically, this program will focus on: Demonstration of specific, operational micro-technology systems; the provision of specific training programs; the provision of specific technical assistance. A comprehensive plan for the program, addressing each center, will be submitted to BJA for approval. This plan shall recommend priority areas (and schedules) for training, systems demonstration, technologies comparison and technical assistance. The approved plan and schedule will be published and will govern the activities of each center.

Eligibility and selection criteria: The cooperative agreement(s) will be negotiated with the Criminal Justice Statistics Association and SEARCH Group, Inc., the organizations jointly responsible for the conduct of the computer laboratories and training centers. Eligibility is established in accordance with the priority and guidance provided by the Congress.

Award period: This award will be for 12 months.

Award amount: The award(s), through cooperative agreement(s), will be negotiated to provide equivalent support for each laboratory and training center. The total program amount is $500,000.

Due date: Applications are due to BJA by February 15, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: A TASC/Case Management Information System: Design, Development and Training.

Goals/objectives: To improve the management, assessment and evaluation capabilities of individual Treatment Alternative to Street Crime (TASC) programs and other case management programs; to replace costly manual data collection for program assessment or retrospective evaluation studies; and, to develop a major data base for statewide and national assessment of criminal justice case management programs, through the development of a basic management information system.

Background: TASC and other programs which manage drug-dependent offenders must provide criminal justice agencies with accurate, complete and timely information to be effective. Criminal justice oversight, which is essential to effective intervention and treatment for drug-dependent offenders, must be continually and accurately informed of an offender's compliance and progress with the case plan. With the growth in drug use by offenders and the consequent growth in drug law enforcement and criminal justice case loads, reliable and timely information can continue only if the TASC program is automated.

BJA-supported analysis by the National Consortium of TASC Programs ("Baseline Management and Assessment Data—TASC") has found that TASC programs systematically collect, use and report on a variety of case management information. However, the collection methods employed, the specific applications made and accessibility, or "user friendliness," of these data systems vary widely among the more than 116 programs in 24 States and one territory. Moreover, only one-quarter of the programs have automated their case management systems.

As criminal justice case management programs continue to shoulder a larger share of community offender monitoring, the volume of data they collect, track and report on is also expanding. An efficient management information system is essential to improve each program's management and operations. The cross program analysis essential to overall program improvement will be possible only when basic data elements are collected in a similar manner by all TASC programs. Other legitimate requests for TASC information are also growing. These requests come from a range of local criminal justice and substance abuse treatment agencies, local, state and national funding agencies, from professional organizations, universities, and other interested parties. Complying with mounting information requests is becoming progressively more difficult and time consuming.

Finally, access to TASC and case management information will foster improved criminal justice planning on the state and national levels. State strategy development for BJA block grant programs requires accurate and reliable information about criminal justice resources and unmet needs within a state. TASC programs must be in a better position to supply information when it can be most useful to criminal justice planners.

Program description: The intended result of this effort is a basic, micro technology system which can be thoroughly documented and placed in the public domain and made available to the vast majority of TASC and case management agencies, directly and through their state and national organizations. If possible, this will be accomplished by identifying and documenting operational or emerging, transferable systems. Given the technical and organizational complexity of this program, it will be accomplished in several stages.

The first stage will be a fundamental needs assessment and requirements analysis based on a careful examination of TASC management requirements and of information systems currently in use or under development. This stage will draw upon an Advisory Board composed of representative TASC program operators and others familiar with BJA/TASC program development. Crucial to the proper design and ultimate acceptability of a TASC management information system is the active involvement of an Advisory

Board which reflects the current environment of TASC across the nation.

The first stage will conclude with the presentation to BJA of a full report of the state-of-the-art of automated case management systems, in a form designated by BJA, which gives criteria for a fully operational management information system.

The second stage, based on the results of the first stage, will be to actually develop the management information system, demonstrate it and test it. Criteria for site selection and an implementation plan for selected sites will be developed. An Advisory Board will also be involved in this stage. We anticipate making revisions and adaptations to the system as a result of testing, culminating in specific software design. The second stage will conclude with a final documented and tested system with an accompanying dissemination plan.

Eligibility and selection criteria: Drawing heavily on the advice of field representatives and interested vendors, selection of the recipient of stage one of this cooperative agreement will be guided by the following criteria:

- Ability to develop an organizational structure for implementing the program;
- Corporate capability and experience in management information system development and software design;
- Current working knowledge of the resources and limitations of TASC and/or criminal justice case management programming;
- Ability and experience in management information system documentation, training, and technical assistance; and,
- Knowledge and experience in criminal justice assessment and evaluation.

Based on the results of stage one, the stage two selection or competition will be separately announced.

Award period: The entire project as described herein will extend no longer than 18 months. However, an initial award will be made for 6 months and will be designated for stage one only: Fundamental needs assessment and requirements analysis and a report on the state-of-the-art of automated case management systems with criteria for a full management information system.

Award amount: One cooperative agreement will be awarded for stage one after negotiations with interested parties. BJA will hold an initial meeting and request for information with representatives from the TASC field and with interested vendors. As a result of that meeting, BJA will announce stage one selection or competition. Specific award amounts will be determined prior to each stage. The award for both stages will not exceed a total of $350,000 allocated for this program.

References: TASC Program Brief, available from BJA by contacting the program manager named below.

Due dates: Application dates for stages one and two will be announced.

Contact person: The BJA contact for additional information is Jody Forman, Program Manager, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Criminal Justice System Modeling Development and Demonstration: JUSSIM Improvements.

Goals/objectives: To enable state and local criminal justice agencies to make use of modeling technology for budget, policy and program decisions.

Background: This modest project continues implementation of an ongoing BJA technical assistance and training program, by providing specific, immediate improvements in the Justice System Improvement Model (JUSSIM), for integration into the demonstration of modeling technology as a tool for criminal justice decision-makers. It will draw upon recent, practical experience in transferring the JUSSIM model from Santa Clara County, CA, to local governments in Ohio, Florida and California. The project will make specific enhancements to the system and make it more user-friendly, in response to the recent growth of interest by state and local governments.

Program description: A supplement to an existing cooperative agreement will be negotiated with The Center for Urban Analysis. A workplan and schedule of deliverables will be submitted to BJA for approval. This plan shall address: Specific improvements in the use and application of JUSSIM, based on recent transfer experience; documentation of the improvements made; demonstration of the methods to be used by state and local governments in acquiring the necessary data to utilize the model; demonstration of the use of the model to track the volume and cost of drug cases passing through the system.

Eligibility and selection criteria: A supplemental cooperative agreement will be negotiated with The Center for Urban Analysis.

Award period: This award will be for 12 months.

Award amount: The award amount will be up to $50,000.

Due date: Application will be due within 15 days of the date of this announcement.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Ssytems Branch, 202/272–4601.

Program title: State Law Enforcement Management Information Systems.

Goals/objectives: To assist and draw upon the experience of selected states actively involved in the design and implementation of information and management systems for law enforcement, for the purpose of identifying basic systems for transfer and for additional development.

Background: This project implements a BJA technical assistance and training program, by providing modest support for states actively engaged in the implementation of basic operational information systems for state and local law enforcement. The intent is to identify basic, micro technology systems which can be thoroughly documented and placed in the public domain and made available to those small to medium sized agencies, which make up the bast majority of criminal justice agencies, and which often lack the resources to identify and employ appropriate technology. This program will be designed to reach these agencies, directly and through their state and national organizations, by documenting the experience of their peers.

Program description: A cooperative agreement(s) will be negotiated with one or more states, to provide modest, additional support for major, ongoing, state-funded (through block or local resources) efforts to implement a basic public domain law enforcement management information system. BJA will receive sufficient documentation to allow for system transfer and for future system refinement and enhancement.

Eligibility and selection criteria: Cooperative agreement(s) will be negotiated with interested states which meet the following criteria: The system is already funded; the system is at a stage of planning and development which allows for demonstration that it is a basic system, a micro technology system, a system with clear potential for wide transfer, a public domain system, a thoroughly documented system.

BJA will invite eligible states to negotiate cooperative agreements, not to exceed $50,000 each. The intention of BJA is to identify and provide modest support for emerging, transferable systems; and to determine the feasibility of a major demonstration program in subsequent funding cycles.

Award period: Award(s) will be for 12 months.

Award amount: The total program amount is $80,000. Individual awards will be for $50,000 or less.

Due date: Applications for cooperative agreements will be due by February 28, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Subpart VII—Other

Program title: Drug Use Forecasting (DUF).

Goal/objective: To provide to local, state and Federal government, specific information on the prevalence and type of drug use among arrestees, in up to 25 sites and by inference in the country as a whole.

Background: This transfer of funds will provide continued support to efforts by the National Institute of Justice (NIJ) to document the prevalence and type of drug use among arrestees in American cites. The program was initially based on extensive research conducted by the NIJ in two major cities. This research was designed to determine the relative risk to the public resulting from pretrial release of drug using arrestees. One by-product of this effort was determining that drug use was much more prevalent than anticipated; over half of the arrestees at these two sites had used drugs just prior to arrest.

The DUF Program was initially established in ten cities to test the representativeness of those findings. By the end of its first year of operation, the program had cumulative data from 12 sites confirming high prevalence levels among the arrestee population. At the end of its second year, 21 sites were operational, women and juvenile arrestees were being included in the sample populations at some of the sites, and regional or other patterns had begun to emerge as to type of drug preferred, frequency of use, and route of administration.

Program Description: An Interagency Agreement will be negotiated with the National Institute of Justice to support periodic urinalysis of arrestees, in up to 25 sites, for the purpose of determining the prevalence of drug use and the kinds of drugs being used. This will provide a broader base of information, by which to determine the rates and kinds of drug use in the nation as a whole, and by which to identify regional variations. NIJ will identify sites in addition to the 21 now participating, will test a representative sample of arrestees quarterly and will report on the findings. This effort is directly supportive of BJA efforts underway to document and transfer the testing approach employed in Washington, DC, and will contribute directly to the development of other testing efforts which are a part of this discretionary program and which are envisioned in state block programs. Coordination with the Drug Enforcment Administration will continue in selecting sites and the substances to be tested.

Eligibility and selection criteria: The Interagency Agreement will transfer the funds to NIJ.

Award Period: This award will be for 18 months.

Award amount: One award, through Interagency Agreement, will be negotiated in the amount of $1,300,000.

Due Date: The Interagency Agreement date will be negotiated with NIJ.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, (202) 272–4601.

Program title: BJS Criminal Justice Drug Data Center Clearinghouse.

Goals/objectives: To provide direct assistance to local, state and Federal anti-drug efforts, through the identification, collection and analysis of drug-crime information necessary for strategic and tactical planning.

Background: This program will continue BJA support of the clearinghouse effort, to meet the need of the criminal justice system for credible, accessible and directly useful data on drugs, the drug-crime relationship and the implications, for criminal justice policy and programs, of the infusion of as growing number of drug-dependent offenders. While data are gathered by a number of Federal agencies, they are seldom consolidated and made available in a form directly useful to criminal justice agencies. The intent here is to inform Federal and state drug efforts with a clear baseline from which to assess their impact.

Program description: The Bureau of Justice Statistics (BJS) has taken the steps necessary to: develop a pointer system which will identify existing sources for drug information; collect drug information relevant to criminal justice, which is not now being collected; analyze and present drug information in a form directly useful to criminal justice policy makers and practitioners; and, to assess the quality of drug information available. This effort, the Data Center and Clearinghouse for drugs and Crime: Provides an "800" number for direct access; gathers and analyzes information being collected as part of the Federal drug effort, such as the strategies under development by the states; coordinates with other information gathering efforts; and publishes appropriate documents, such as a drug version of the BJS Report to the Nation. The Center and Clearinghouse is a central source of data from diverse Federal, state, and local agencies as well as from the private sector.

Eligibility and selection criteria: The Interagency Agreement will transfer the funds to the Bureau of Justice Statistics.

Award period: This award will be for 12 months.

Award amount: One award, through Interagency Agreement, will be made in the amount of $200,000.

Due Date: The Interagency Agreement date will be negotiated with BJS.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, (202) 272–4601.

Program title: Innovative Local Program Documentation: Disposition and Management of the Drug-dependent Offender.

Goals/objectives: To provide modest assistance to and to draw upon and document the experience of innovative local programs which have the potential of contributing substantially to the existing body of knowledge regarding the drug-dependent offender.

Background: This project will provide modest support for programs actively serving the criminal justice system in the disposition and management of the drug-dependent offender. BJA has actively supported TASC, as the case management standard, and Intensive Supervision Probation as an appropriate disposition for certain drug-dependent offenders. The intent here is not to duplicate or supplement those programs, for which critical elements are established and for which block funding is available. Rather the intent of this effort is to identify established and effective local programs or functions which differ from, and can potentially contribute to, BJA-supported programs.

Priority consideration will be given to effective programs which: Assist criminal justice decision makers in the disposition of drug-dependent offenders; provide aftercare for drug-dependent offenders released from institutional programs; manage drug-dependent offenders facing extended waiting periods for treatment; provide credible evaluations of local treatment and/or case management programs and/or, match drug-dependent offenders with available local services.

Program description: Cooperative agreements will be negotiated with selected operating programs to provide modest, additional support for ongoing efforts. BJA will receive sufficient information and documentation, in an agreed upon form, to allow for the

contributions of these programs to be incorporated into the overall BJA program.

Eligibility and selection criteria: Concept papers will be accepted from public and private, non-profit programs. An expert panel will review, rank and rate the concept papers and make recommendations to BJA. The panel will be guided by the priorities listed above, by the degree to which the concept papers establish the effectiveness of the program addressed, and by the relative contribution to program knowledge anticipated from the program addressed. Cooperative agreements will be negotiated with selected programs.

Award period: Awards will be for 12 months.

Award amount: The total program amount is $250,000. Individual awards will be for $50,000 or less.

Due dates: Concept papers are due by January 31, 1989. Selected programs will be invited to negotiate for final awards before the end of March, 1989.

Contact person: The BJA contact for additional information is John Gregrich, Chief, Drug Abuse/Information Systems Branch, 202/272–4601.

Program title: Consortium to Assess the Impact of the State Drug Strategies.

Goals/objectives: To bring together states committed to assessing the impact of their state drug strategies for the purpose of defining, collecting and analyzing information on drug control efforts and to provide policy makers at the Federal, state and local levels with feedback on the effectiveness of state drug control strategies.

Background: States receiving BJA block grant funding were required by the Anti-Drug Abuse Act of 1986 to develop a statewide drug strategy. The strategy must be reviewed and updated annually. This review and any modifications of the strategy should be based on an analysis of the impact of current efforts on the drug problem. A Consortium of States was established in early 1988 to serve as a forum for the states to work together to identify methods of assessing the impact of their strategies and share information. Fifteen states are actively participating in the Consortium.

Program description: BJA will negotiate a cooperative agreement with the Criminal Justice Statistics Association (CJSA) to continue and expand the Consortium efforts in up to 20 states to define methods of assessing the impact of the state strategies, collect and analyze data on drug control efforts in the states, and provide assistance to non-participating states through a workshop on strategy evaluation. CJSA will prepare a report on the methods used to assess the impact of the state strategies and the results of the analysis. The report will serve as a guide for states not participating in the Consortium and the results will be incorporated in BJA's annual report to Congress.

Eligibility and selection criteria: The award will be made to the Criminal Justice Statistics Association, on a non-competitive basis, due to the Association's unique qualifications and relationship with the Statistical Analysis Centers in the states.

Award period: This award will be for a 12-month period.

Award amount: One cooperative agreement of up to $600,000 will be negotiated.

Due date: The application for the cooperative agreement will be due by January 15, 1989.

Contact person: The BJA contact for additional information in Patricia A. Malak, Chief, Program Analysis Branch, Policy Development and Management Division, 202/724–5974.

Program title: Serious Juvenile Offenders Project: Accountability in Disposition for Juvenile Drug Offenders.

Goals/objectives: To continue providing technical assistance and training for Serious Juvenile Offender Projects. To enhance the program by adding a new component which will assess interest in the accountability approaches for youthful drug offenders and the feasibility of various options for implementation; develop guidelines and program requirements; provide technical assistance and support for the implementation of demonstration projects; and document the implementation process to facilitate evaluation and eventual replication of a program that makes youth accountable for drug offenses.

Background: Since 1986, BJA has funded the Pacific Institute for Research and Evaluation (PIRE) to provide on-site and documentary training and technical assistance for judiciary and criminal justice personnel who administer and work with BJA-funded local programs that address the needs of serious juvenile offenders. This effort complements the work of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) by meeting the needs of BJA-funded programs addressing this issue.

When this effort began, the number of projects requiring services was 19. During the years 1987–1988 that number grew to 42. These Serious Juvenile Offenders Programs have provided services which impacted 10,033 youth. PIRE has sponsored two National Conferences and several Mini Seminars and Cluster Conferences which responded to the training needs of persons working in restitution programs from almost every state in the United States. This program will continue providing training and technical assistance for new block grantees and will implement a new component which will research and document guidelines and program administration requirements to be used in programs which address accountability requirements of youth who are drug dependent.

Program description: The Program will continue on-site and documentary technical assistance and training for recipients of BJA block grants administering programs which address problems of serious juvenile offenders, based on the critical program elements documented in the revised "Restitution by Juveniles" Program Brief prepared in 1988. As in the past, BJA block grantees will also be eligible to recieve training and other benefits from the marketing efforts, training events, and other contacts provided through grants from OJJDP. This program will continue to be coordinated with OJJDP.

This initiative will be enhanced to provide a survey report assessing needs and interest in accountability approaches for youthful drug offenders and to develop an implementation guide (Program Brief) that includes program designs, critical program elements and performance standards for programs which address accountability of drug-dependent youth. The project staff will develop the plan for providing technical assistance and training for programs/staffs that implement these approaches, and for selection of juvenile courts interested in pilot or demonstration projects under Phase I. Phase II, if funded, will provide for demonstration sites to implement projects using the documented critical program elements, guidelines, and performance standards developed under Phase I.

Eligibility and selection criteria: The BJA will negotiate a supplemental cooperative agreement with the Pacific Institute for Research and Evaluation.

Award period: The extension will be for 12 months.

Award amount: One cooperative agreement for up to $200,000 will be awarded.

Due date: The grantee must submit a full application not later than January 31, 1989.

Contact person: The BJA contact for additional information is Dorothy L. Everett, Program Manager, Drug Abuse/

Information Systems Branch, 202/272–4604.

Program title: Crime Victims Clearinghouse.

Goals/objectives: To continue providing support for the operation of the National Victims Resource Center, a national clearinghouse which provides informational services to crime victims services agencies.

Background: BJA has provided support through transfers of funds to the Office for Victims of Crime for the collection and maintenance of data developed by grantees funded under the Victims of Crime Act of 1984. This data is used to assist victims assistance programs in furthering their mission.

Program description: BJA will continue to help support the operation of the National Victims Resource Center to assist crime victims and victim service agencies through an interagency transfer of funds to the Office for Victims of Crime (OVC).

Eligibility and selection criteria: A transfer of funds will be made to the Office for Victims of Crime.

Award period: Program funding will be for a 12-month period.

Award Amount: Up to $100,000 will be available for this transfer.

Due dates: The date of the interagency transfer will be negotiated between BJA and OVC.

Contact person: The BJA contact person for additional information is John Veen, Program Manager, Prosecution Branch, 202/272–4601.

Charles P. Smith,

Director, Bureau of Justice Assistance.

[FR Doc. 89–264 Filed 1–6–89; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–6040 et al.]

Proposed Exemptions; Coldwell Banker Commercial Group, Inc. (CBCG), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon the by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Coldwell Banker Commercial Group, Inc. (CBCG) Located in Los Angeles, CA

[Application No. D–6040]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Part I—Exemption for Certain Transactions Involving Investment in a Managed Trust Account

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the code by reason of section 4975(C)(1) (A) through (D) of the Code shall not apply to employee benefit plan (Participating Plan) investment in a trust account (Managed Trust Account) which is not commingled with the assets of other trust accounts where Coldwell Banker Real Estate Trust Services (the Trust Company) serves as trustee and the Trust Company (or its affiliate) renders investment management services, provided that:

(a) Each investment is authorized in writing by a fiduciary of a Participating Plan who is independent of the Trust Company and any of its affiliates; and

(b) The applicable General Conditions of Part V are met.

Part II—Exemption for Certain Transactions Involving Parties in Interest and Common Trusts

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction between a party in interest with respect to a Participating Plan and a common or collective trust sponsored and maintained by the Trust Company (Common Trust) if the applicable General Conditions of Part V are met and, at the time of the transaction, the Participating Plan in such Common Trust together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total of all assets in the Common Trust.

Part III—Exemption for Certain Transactions Between Common Trusts or Managed Trust Accounts and the Trust Company or its Affiliates

The restrictions of section 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to the transaction described below, if the General Conditions of Part V are satisfied:

The payment to the Trust Company of disposition fees (Disposition Fees) under the terms established in the respective Trust Agreement governing the Common Trust or Managed Trust Account (and as described in the summary of facts and representations), provided that the payment and terms of such Disposition Fees shall have been approved by an independent fiduciary of the plan at the time the Trust Agreement was entered into and that the total of all fees paid to the Trust Company constitute no more than reasonable compensation.

Part IV—Exemption for Certain Transactions Between Joint Ventures or Partnerships and the Trust Company or its Affiliates

The restrictions of section 406(b)(3) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the transaction described below:

The payment of fees or commissions to CBCG or its affiliates by partnerships or joint ventures in which a Common Trust or Managed Trust Account is a partner or joint venturer or by an entity with respect to which a Common Trust or Managed Trust Account has made a loan which is convertible into equity, for Management Services furnished with respect to such partnership or joint venture; provided that the applicable General Conditions of Part V are satisfied and the following conditions are met:

(a) The fees or commissions paid to CBCG or its affiliates are reasonable;

(b) A party which is not affiliated with the Trust Company or its affiliates and which has an equity interest in excess of 10 percent in the partnership, joint venture or the entity to which the loan was made makes the decision to hire the service provider;

(c) Neither the Trust Company nor its affiliates have the power to exercise control over the selection of the service provider (other than through the exercise of a veto for reasonable cause); and

(d) The portion of any fee received by the CBCG or an affiliate from the partnership or joint venture for which the Common Trust or Managed Trust Account is responsible due to its proportionate interest in the partnership or joint venture will be applied as a credit to the Management Fee paid to the Trust Company by the Common Trust or Managed Trust Account.

Part V—General Conditions

(a) All transactions are on terms and conditions that are at least as favorable to the Managed Trust Account(s) and Common Trust(s) as those in arm's length transactions between unrelated parties would be.

(b) No plan subject to the provisions of Title I of the Act or to section 4975 of the Code may invest in a Common Trust or establish a Managed Trust Account unless the plan has total net assets with a value in excess of $50,000,000 and no such plan may invest more than 5 percent of its assets in any one Common Trust or Managed Trust Account, or more than 10 percent of its assets in Trust Accounts established by the Trust Company or an affiliate.

(c) Prior to making an investment in a Common Trust or Managed Trust Account, a fiduciary for the plan independent of CBCG and its affiliates receives offering materials which disclose all material facts concerning the purpose, structure and operation of the such Trust or Trust Account in which it participates.

(d) Each Participating Plan shall receive the following with respect to any Common Trust or Managed Trust Account in which it participates:

(1) Audited Financial Statements, prepared by independent public accountants selected by the Trust Company, not later than 90 days after the end of the Common Trust or Managed Trust Account fiscal year.

(2) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account, which will include all fees paid by the Common Trust or Managed Trust Account, and by any partnerships or joint ventures in which the Common Trust or Managed Trust Account is invested.

(3) Annual estimates prepared by the Trust Company of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(4) Copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks, and an immediate report with regard to any findings by the California Superintendent of Banks involving inappropriate fiduciary behavior with respect to any Managed Trust Account of Common Trust.

(5) In the case of a Common Trust, a list of all of the other investors in the Common Trust.

(e) The Trust Company or its affiliate shall maintain, for a period of six years, the records necessary to enable the persons described in subsection (f) of this Part V to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Trust Company or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty that may be assessed under Section 503(i) of the Act or to the taxes imposed by Section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (f) below.

(f) Notwithstanding any provisions of section 504(a)(2) and

(b) of the Act,

The records referred to in subsection (e) of this Part V shall be unconditionally available at their customary location for examination during normal business hours by:

(1) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the California Superintendent of Banks;

(2) Any fiduciary of a Participating Plan or any duly authorized employee or representative of such fiduciary;

(3) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer; and

(4) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

Part VI—Definitions and General Rules.

For the purposes of this exemption:

(a) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Management Services" means:

(1) Services of real estate brokers and finders in connection with the acquisition or disposition of real property or interests therein.

(2) Services of property managers.

(3) Services of leasing agents in connection with obtaining leases on properties owned by the Common Trust or Managed Trust Account.

(d) The term "relative" means a "relative" as that term is defined in Section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or sister.

The availability of this exemption is subject ot the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this exemption.

Summary of Facts and Representations

1. The Trust Company is a California trust company formed as a wholly-owned subsidiary of CBCG. An application for authorization to form the Trust Company was approved by the California State Banking Department on August 5, 1980. A letter supplementing the original application was filed on May 11, 1982, reflecting certain changes which have occurred since that application was approved, e.g., the acquisition of CBCG's parent company, Coldwell, Banker & Company (CB), by Sears, Roebuck and Co. (Sears). That supplemental application has been reviewed and approved by the California State Banking Department. The Trust Company's activities will be governed by the rules and regulations of California law which control the activities of trust companies and will be subject ot the supervision of the California Superintendent of Banks, including on-site audits and quarterly reporting.

The principal activity of the Trust Company will be to provide trust and real estate investment management services for tax exempt institutions wishing to invest in real estate. It is contemplated that, for the most part, its clientele will be comprised of employee benefit plans sponsored by corporations, labor unions and governmental agencies. In all cases the institutional investor will enter into an agreement (the Trust Agreement) pursuant to which the Trust Company will become trustee with respect to invested assets. The Trust Agreements for Common Trust Accounts will provide that assets contributed thereto will be commingled with the assets of other Common Trust Accounts in one of a series of closed-end collective trusts (Common Trusts) for the purpose of making investments in real estate.[1] As an alternative to participating in a Common Trust, a plan may elect to establish a Managed Trust Account which will invest in real estate separately. In all cases, the Trust Company will have the responsibility for investing any contributions either separately in the case of the Managed Trust Accounts or collectively, through the Common Trust, and for the management and disposition of the properties it acquires as trustee. The applicant represents that the Trust Company is expected to be a qualifed professional asset manager (QPAM) as that term is defined in Prohibited Transaction Exemption 84–14 (PTE 84–14,49 FR 9494, March 13, 1984).[2] Therefore, the applicant's request for exemption involves those transactions which may not be covered by PTE 84–14 or other relevant statutory exemptions under section 408 of the Act.

CBCG was incorporated in 1972 to take over the function of providing fully integrated commercial real estate services for CB's clients and to manage the real estate assets of institutional partnerships formed by it. CBCG provides a broad range of services related to commercial real estate. It has been involved in negotiating the sale and lease of virtually every type of real property, including industrial, commercial, office building and apartment complexes. CBCG is also involved directly in property management, capital management, real estate investment advisory services, real estate appraisal, real estate consultation, market research, and other real estate related services.

CB is a wholly-owned subsidiary of Sears and operates as the successor to a real estate brokerage business established in 1906. Prior to its acquisition by Sears on December 31, 1981, CB was, and continues to be, the largest diversified real estate service organization in the United States, with operating offices throughout the country.

Since being acquired by Sears, the activities of CB and its affiliates have been designated a part of the Coldwell Banker Real Estate Group (CB Real Estate Group). The CB Real Estate Group in turn has three major groups in its organizational structure: (1) Coldwell Banker Residential Group, providing residential brokerage and other services; (2) Homart Development Co., involved in commercial real estate development; and (3) CBCG, providing brokerage and other services for all types of commercial real estate.

2. The applicant represents that Participating Plans establish either Common Trust Accounts or Managed Trust Accounts (collectively, Trust Accounts) which will invest in real estate, either by pooling assets through the mechanism of a Common Trust or separately in the case of Managed Trust Accounts. No plan may invest in a Trust Account unless it has at least $50,000,000 in assets, and no plan may invest more than 5% of its assets in any one Trust Account, nor more than 10% of its assets in Trust Accounts maintained by the Trust Company or an affiliate. The Common Trusts and Managed Trust Accounts will be designed either as "blind" accounts where the plans invest and the Trust Company then selects real estate investments, or as "specified property" accounts where the Trust Company identifies a particular property or properties for investment and the plan(s) then invest in the specified account. The Trust Accounts will be established pursuant to a Trust Agreement. Under the terms of the Trust Agreements, the Trust Company will have complete responsibility, with certain exceptions discussed in paragraph 7 below, for, *inter alia*, searching for investments, making investment decisions and for the management and disposition of the properties it acquires as trustee, although a plan establishing a Managed Trust Account may, if it chooses to do so, provide guidelines to be followed by the Trust Company in investing and managing assets in that Managed Trust Account.

[1] The term Common Trust as used herein includes common trust funds exempt from tax under section 584 of the Code and group trusts, as defined in Rev Rul. 81–100, 1981–1 C.B. 326. In the case of a group trust, Common Trust Accounts will not actually be separate trusts formed for purposes of participating in the collective investment trust. Rather, the Participating Plans will invest directly in the group trust via agreements to participate. Such agreements to participate are included within the term Common Trust Account. The applicant represents that a plan's investment in a Common Trust will be exempt from the restrictions of section 406(a) of the Act by reason of section 408(b)(8). The Department expresses no opinion herein whether all of the conditions of section 408(b)(8) will be satisfied in such transactions.

[2] The applicant represents that, in order to comply with the conditions of PTE 84–14, Parts II and III, in cases where a Common Trust or Managed Trust Account using a CB affiliated broker leases property to the Trust Company, an employer with respect to an investing plan or an affiliate, of either the Trust Company will pay the broker's commission, credit that amount to the Trust Account, and reduce the monthly Management Fee by that amount. The Department expresses no opinion as to whether this arrangement complies with the relevant conditions of the PTE 84–14, Parts II and III.

3. The decision to participate in a Trust Account and the determination of the amount to be placed therein will be made by a fiduciary of the plan who is independent of and unrelated to CBCG or any of its affiliates.[3] The decision to invest in a Trust Account will be based upon knowledge of the terms and conditions established in the Trust Agreement and disclosed in a prospectus, and of the conditions imposed by this exemption. The investment objectives of each Common Trust and Managed Trust Account will be to obtain operating income and capital appreciation, primarily through the purchase of equity interests in or the development of income-producing real property. Investments will consist principally of fee interests, leaseholds, joint venture participations and mortgage loans convertible into any of the forgoing interests in real estate. The Trust Company represents that, due to the illiquid nature of most real estate investments and the closed end nature of the Common Trusts, Participating Plans generally will not be able to redeem their interests in a Common Trust prior to the termination and dissolution of the Common Trust.

4. The Trust Company expects that Trust Accounts ordinarily will be fully invested in real estate within 12 to 18 months of their inception depending on the type of properties sought, the market for such properties at the tme, any geographic or size requirements and other variables. Pending the investment in real estate, the Trust Company will invest cash contributed to the Trust Account in: obligations of the United States or its agencies; repurchase agreements with respect to such obligations; certificates of deposit or deposits in interest bearing accounts of banks insured by the Federal Deposit Insurance Corporation; money market funds having assets of over $100 million; commercial paper rated A1 or better; and bankers' acceptances of banks having assets in excess of $1 billion.

5. Any income from the operation or proceeds from the sale or refinancing of assets of the Common Trust or Managed Trust Account and any contributions by the Participating Plan(s) to the Common Trust or Managed Trust Account in excess of the amount required for initial investment will be distributed to such Plan(s) to the extent that such amounts are not needed for Trust purposes. For example, certain sums will be used to maintain reasonable reserves established by the Trust Company in connection with the Trust assets (including, without limitation, reserves for repayment of existing or anticipated obligations or for contingent liabilities). Such distributions shall be made to the Participating Plan within a reasonable time after the completion of the annual audit for that fiscal year, but in no event later than ninety (90) days after the close of such fiscal year. Subject to the dissolution and termination provisions of the Trust Agreement (described in paragraphs 9 and 10), the Trust Company expects that the Trust Accounts will generally hold their real property investments for a period of not less than ten years. However, there is no restriction upon the length of time that real property investments of the Common Trusts and Managed Trust Accounts may be held. The Trust Company, in its sole discretion, may sell or refinance any or all investments at any time if it believes such action would be in the best interest of the Managed Trust Account or the Common Trust.

The income from investments and the net cash proceeds from any sale or other disposition or refinancing of real property, less the operating reserves noted above, will not be reinvested in real estate but will be distributed to the Plan(s) participating in the Managed Trust Accounts of Common Trusts. The Managed Trust Accounts and Common Trusts, therefore, are intended to be self-liquidating in nature. Such distributions to Participating Plans will be treated as return of capital and taken into account when the Disposition Fee (described below) is calculated.

6. The applicant represents that Participating Plans will be charged a one-time Subscription Fee (generally 1–2% of invested assets) at the tme they make their investment in a Trust Account to defray the expenses of organizing the Trust Account, identifying suitable investments, and completing the initial purchases of investment properties for the Trust Account. In addition, the Trust Company will be paid a monthly Management Fee, expected to range from 0.1667–0.2083% per month (or 2–2.5% annually) of the net asset value of the Trust Account. The value of assets for the purpose of determining the Management Fee will be based upon independent appraisals by licensed appraisers who are not employees or affiliates of the Trust Company or an affiliate. The Management Fee will compensate the Trust Company for its investment management and Management Services, including property management, real estate brokerage and related services.[4] The Trust Company will employ Coldwell Banker Capital Management Services, Inc. (CBCMS) a subsidiary of CBCG and an affiliate of the Trust Company to provide such Management Services. CBCMS is a registered investment advisor under the Investment Advisers Act of 1940 and the applicant represents that CBCMS will also be a QPAM. CBCMS will utilize the services of others, including other CBCG divisions and subsidiaries as required, at no additional cost to the Trust Accounts. The Trust Company will also have the responsibility to provide or arrange for all other support services performed by non-CBCG affiliates necessary to the operation of the investment of the Common Trusts and Managed Trust Account.

Once all the investment properties of a Trust Account have been sold and the proceeds of the sale have been distributed or are available for distribution the Trust Company may be paid a Disposition Fee in accordance with the terms of the Trust Agreement. (A Disposition Fee may also be paid on the basis of a constructive sale pursuant to the trustee removal and resignation provisions of the Trust Agreement discussed in paragraph 9 below.) A Disposition Fee will be payable only after the Participating Plans have received, through distributions from the Trust Account, a return of all the capital

[3] The applicant has represented that CBCG or its affiliates may act as a fiduciary or a service provider to plans which may invest in a Trust Account. However, the applicant has also represented that neither CBCG nor any affiliate will use the authority, discretion or influence which makes CBCG or such affiliate a fiduciary with respect to such plan to cause the plan to invest in a Trust Account.

The Department notes that, to the extent that CBCG or an affiliate is deemed to be a fiduciary by virtue of rendering investment advice as described in regulation 29 CFR 2510.3–21(c)(ii)(B), the presence of an unrelated second fiduciary acting on the investment adviser's recommendations on behalf of the plan is not sufficient to insulate the investment adviser from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) In this regard, the Department has determined that it is unable to make the findings necessary under section 408(a) of the Act with respect to transactions which involve the provision of investment advice by CBCG or its affiliates. Accordingly, the Department has limited relief for investments in Managed Trust Accounts to section 406(a) of the Act

[4] The applicant represents that the provision of investment management and Management Services by CBCG or its affiliates and the receipt of fees thereby is exempt from the prohibitions of section 406(a) of the Act by reason of section 408(b)(2). The Department expresses no opinion as to whether the relevant conditions of section 408(b)(2) are complied with in the above arrangement. The Department notes, however, that to the extent that a Participating Plan's investment in a Trust Account does not meet the conditions of section 408(b)(8) of ERISA or Part I of this proposed exemption, the relief afforded by section 408(b)(2) of ERISA may not be available.

invested in the Trust Account by the Participating Plans and an annual rate of return on that capital which will be specified in advance for each Trust Account before any investments are made by any Participating Plan. The Disposition Fee will be a pre-determined fixed percentage of the excess of the disposition proceeds over the amount necessary to provide the return of capital and pre-established rate of return to the Participating Plans.

The applicant represents that the fee structure, including the Disposition Fee, is in the interest of the Participating Plans because it provides an added inducement for the Trust Company to take the actions necessary to maximize the return to the Participating Plans. In addition, the Participating Plans will receive their return of capital and the pre-established rate of return before a Disposition Fee will be payable.

7. The applicant represents that with certain types of investment activity, it is very difficult to estimate leasing brokerage fees. Accordingly, when such investment activity is to be the principal activity of a Managed Trust Account, Participating Plans may want to retain control over leasing brokerage decisions to avoid the uncertainty in the fee estimation process. In order to accommodate this interest, some Managed Trust Accounts may be structured so that the Participating Plans maintain complete control over all leasing brokerage decisions including the selection of leasing brokers and payment of leasing brokerage fees. As a result, the Trust Company would not exercise any fiduciary authority in the leasing brokerage area. Rather, independent fiduciaries for the Participating Plans will select the leasing brokers, and negotiate and approve all leasing brokerage fees. Such leasing brokerage fees will be charged back directly to the Managed Trust Account.[5] The applicant represents that the Management Fee charged Managed Trust Accounts for real estate related services will be reduced in these circumstances to reflect the reduced responsibilities of the Trust Company.

[5] It is represented that in such situations, the possible payment of brokerage commissions to CBCG affiliates will be exempt from the prohibitions of section 406(a) of the Act by the statutory exemption provided by section 408(b)(2). The Department expresses no opinion herein whether all of the conditions of section 408(b)(2) of the Act will be satisfied in such transactions. In addition, the Department notes that the exemption for party in interest transactions with such plans contained in PTE 84-14 will be unavailable, because the Trust Company, as QPAM, will not be negotiating the terms of the transactions on behalf of the Managed Trust Accounts.

8. Services which are necessary and customary in the operation of real estate investments, and not included in Management Services, will be provided exclusively by independnt service providers who will be compensated by the Trust Accounts. Such services include, but are not limited to: legal services; services of architects, designers, engineers, etc.; insurance brokerage and consultation; auditing and accounting; appraisals and mortgage brokerage; and development of income-producing real property. The fees charged to the Trust Accounts by the independent service providers will be commesurate with the fees charged by the service provider on a regular basis for comparable work in the respective locale.

9. Under the Trust Agreement for a Managed Trust Account, the Trust Company may be removed as trustee, at any time, without cause, by the Participating Plan establishing such Managed Trust Account through the delivery of a notice of removal to the Trust Company. The Trust Company may resign as trustee, at any time after the Managed Trust Account has been in existence for ten years, without cause, by written notice to the Plan. Such removal or resignation will generally be effective upon the acceptance of appointment by a successor trustee appointed by the Plan.

The Trust Company may be removed as trustee under a Common Trust at any time upon an affirmative vote or written consent of Participating Plans which have contributed 50% or more of the capital in the Common Trust. The Trust Agreement will provide that any holders of 10% or more of the interests in the Common Trust can direct the Trust Company to call a meeting of the investors to consider such removal. The Trust Company may resign, without cause, at any time after the tenth anniversary of the creation of the Common Trust, by written notice to the Participating Plans. Such removal or resignation will generally be effective upon the acceptance of appointment by a successor trustee appointed by Participating Plans which have contributed 50% or more of the capital in the Common Trust.

In the case of either a Common Trust or Managed Trust Account, when the Trust Company is removed or resigns as trustee, the Trust Company will be entitled to the Disposition Fee based on a constructive sale of the Trust Account's assets, calculated as the Disposition Fee would be in the event of the actual sale of all of the Trust Account's assets. The value of the Trust Account's assets for the purpose of a constructive sale will be established by an MAI licensed real estate appraiser, independent of CBCG and its affiliates and approved by the Participating Plan establishing the Managed Trust Account or Participating Plans which have contributed 50 percent or more of the capital to the Common Trust. The valuation to be used for the purpose of calcualting whether a "constructive sale" Disposition Fee is owed, and how much, will be the lower of the appraisal or the most recent annual valuation prepared by the Trust Company for the Trust Account's assets.

10. A Managed Trust Account may be dissolved and terminated at any time by the Participating Plan upon ninety (90) days written notice to the Trust Company. The events which will cause dissolution and termination of a Common Trust are: (1) The decision of participants holding more than fifty percent (50%) of all interests in the Common Trust; (2) the decision of the Trust Company, after the Common Trust has been in existence for 15 years; and (3) failure to select a successor trustee within sixty (60) days following the removal or resignation of the Trust Company as trustee.

11. Each plan participating in a Common Trust or Managed Trust Account will receive:

(a) Audited Financial Statements prepared by independent public accountants selected by the Trust Company not later than ninety (90) days after the end of the Common Trust or Managed Trust Account fiscal year.

(b) Quarterly reports prepared by the Trust Company relating to the overall financial position and operating results of the Common Trust or Managed Trust Account and, in the case of Common Trusts, the balance of each participant's Trust interest. In addition, the reports will include a full disclosure of all fees paid by the Common Trust or Managed Trust Account, and by any partnerships or joint ventures in which it has invested.

(c) Annual estimates of the current fair market value of all properties owned by the Common Trust or Managed Trust Account.

(d) In the case of a Common Trust, a list of the investors in that Common Trust.

In addition, the plan or plans participating in a Managed Trust Account or Common Trust, the sponsor or sponsors of such plan or plans, the participants and beneficiaries of such plan or plans and duly authorized representatives of any of the above will have access during normal business

hours to all records of the Trust Company relevant to Trust Accounts in which they have an interest. The Department, the Internal Revenue Service and the California Superintendent of Banks will have access to all Trust Company records. The Trust Company will retain all such records for a period of six years. The Participating Plans will also be provided with copies of the quarterly reports which the Trust Company is required to file with the California Superintendent of Banks.[6]

12. The Trust Company will be empowered to invest Trust Account assets in joint ventures or partnerships for the purpose of acquiring or developing real property. In connection with those transactions, CBCG or its affiliates may be employed by the joint venture or partnership to provide services and be compensated by the entity, provided that:

(a) The decision to hire service providers is made by a party unaffiliated with the Trust Company or its affiliates which owns more than 10 percent of the equity interet in the entity;

(b) The fees are reasonable;

(c) Neither the Trust Company nor any affiliate has the power to exercise control over the selection of service providers (other than through the exercise of a veto for reasonable cause); and

(d) the amount of any fee received by CBCG or an affiliate from the partnership or joint venture representing the Trust Account's proportionate share of the partnership or joint venture and its expenses will be applied as a credit to the Management Fee paid by the Trust Account.[7]

13. The applicant represents that the Trust Company and CBCMS will be QPAMs, and intend to rely on PTE 84–14 for most transactions between the Trust Accounts and parties in interest with respect to Participating Plans. However, in addition to their reliance on QPAM they are requesting an exemption from section 406(a)(1) (A) through (D) of the Act for transactions between a Common Trust and a party in interest with respect to a Participating Plan which has the power to appoint or terminate the Trust Company as the manager of any of the Plan's assets, or to negotiate the terms of the management agreement with the Trust Company on behalf of the Plan, if the interest of the Participating Plan together with the interests of any other plans maintained by the same employer and/or employee organization in the Common Trust do not exceed 10 percent of the total assets of the Common Trust. The applicant represents that the 10 percent limitation, which applies to each Common Trust, rather than the total client assets managed by the Trust Company, is a sufficient safeguard against the Trust Company being subjected to improper influence by those entities with the power to hire or fire the Trust Company.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because, among other things:

(a) The decision to invest in a Trust Account will be made on behalf of a Plan by a fiduciary independent of CBCG, the Trust Company and their affiliates following full disclosure of all material facts of the purpose, structure and operation of the Trust Account;

(b) Only Plans with at least $50,000,000 in assets will be allowed to invest in a Trust Account and no Plan may invest more than 5 percent of its assets in a Trust Account, nor may any Plan invest more than 10% of its assets in the Trust Accounts;

(c) A Disposition Fee will be paid only: (1) after all the properties in a Trust Account have been sold (or constructively sold); and (2) if the total proceeds exceeds the amount necessary to provide the Participating Plan(s) the return of invested capital plus the pre-established annual rate of return; and

(d) the decision to have CBCG or an affiliate provide services to a joint venture or partnership in which a Trust Account has invested will be made by an owner of at least 10% of the equity of the entity who is independent of CBCG and there will be a credit applied to the Management Fee of the Trust Account for any fee paid for services by the joint venture or partnership to the extent of the Trust Account's proportionate responsibility for such fee.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8671. (This is not a toll-free number).

Pan American World Airways, Inc. Cooperative Retirement Income Plan, (Cooperative Plan) et al.

In the matter of Pan American World Airways, Inc. Cooperative Retirement Income Plan (Cooperative Plan); Pan American World Airways, Inc. Defined Benefit Plan for Flight Engineers (Flight Engineers Plan); Pan American World Airways, Inc. Non-Contract Employees' Pension Plan (Non-Contract Plan); Pan American World Airways, Inc. Mechanical Stores and Related Employees' Pension Plan (Mechanical Stores Plan); and Pan American World Airways, Inc. Clerical, Office, and Station Employees' Pension Plan (Clerical Plan) (collectively, the Plans) Located in New York, New York.

[Application Nos. D–7433 and D–7444 through D–7447]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed purchase, by the Plans from Pan Am World Airways, Inc. (Airways) of a portion of a leasehold estate (the Leasehold) in the "Worldport" airline passenger terminal (the Terminal) and the land (the Land) underlying the Terminal located at John F. Kennedy International Airport (JFK); (2) the proposed contribution in kind to the Plans by Airways of the remaining value of the Leasehold following reduction for that portion of the Leasehold sold to the Plans by Airways; and (3) the proposed sublease (the Sublease) of the Terminal by the Plans to Airways for the duration of the remaining term of the Leasehold at a fixed monthly rental rate; provided that the terms of the transactions are not less favorable to the Plans than those negotiated at arm's length in similar circumstances between unrelated third parties, and an independent fiduciary, among other things, reviews, monitors, and approves the proposed transactions.

[6] In addition, where CBCMS or another Coldwell Banker affiliate which is a registered investment advisor provides services with respect to any Managed Trust Account or Common Trust, copies of reports filed with the SEC under the Investment Advisers Act of 1940 will also be provided to the plan or plans participating in such Managed Trust Account or Common Trust.

[7] The applicant represents that in the circumstances described, to the extent that the decision to select the Trust Company or an affiliate to provide services to the joint venture or partnership is made by a party independent of the Trust Company, and all of the conditions of section 408(b)(2) of the Act are satisfied, the provision of services and the receipt of fees by the Trust Company or an affiliate would be exempt from the prohibitions of section 406(a) of the Act. The applicant further represents that such selection would not constitute violations of the self dealing provisions of section 406(b)(1) and 406(b)(2). However, the applicant has requested an exemption from section 406(b)(3) of the Act, because an affiliate of the Trust Company may receive fees from the joint venture or partnership.

Summary of Facts and Representations

1. Airways, the sponsor of the Plans, is a New York corporation organized in 1927 and headquartered at 200 Park Avenue, New York, New York. Airways is an international airline serving approximately 28 cities in the U.S. and 68 destinations in Europe, Latin America, the Caribbean, Asia, Africa, and the Middle East. Airways is one of two principal subsidiaries of Pan American Corporation (Pan Am), a Delaware holding company. The other subsidiary, Pan Am World Services, Inc. (World Services), provides management and technical services on a contract basis to governments and private entities around the world.

In addition to World Services and Airways, Pan Am owns two other airline subsidiaries, Pan Am Express, Inc. (Pan Am Express) and the Pan Am Shuttle. Pan Am Express services 12 cities in the U.S. and Canada and 10 cities in Europe, providing connecting traffic to Airways' long-haul international operations. The Pan Am Shuttle provides hourly service in the New York-Boston and New York-Washington DC markets.

2. All of the Plans involved in the proposed transactions are tax-qualified defined benefit pension plans, and all are subject to Title IV of the Act. The named fiduciary for the Plans, within the meaning of section 402(a)(2) of the Act, is a pension committee (the Committee) established by Airways which is responsible for establishing investment guidelines for the investment and reinvestment of assets of the Plans, other than the Leasehold, and for monitoring the investment performance of Bear Stearns Fiduciary Services, Inc. (Fiduciary Services), which is acting as the independent fiduciary on behalf of the Plans for the proposed transactions.

As of January 1, 1987, the Plans had a total of 40,200 participants of which 17,637 are active and 22,563 are inactive, retired, or terminated vested participants. As of January 1, 1987, the three largest Plans were the Cooperative Plan, the Clerical Plan, and the Mechanical Stores Plan.

Collectively, the Plans have assets, as of January 1, 1987, totalling approximately $475.3 million, excluding any unpaid contributions due to the Plans. The Cooperative Plan is the largest with assets amounting to $345.3 million. The Flight Engineers Plan, the Mechanical Stores Plan, the Non-Contract Plan, and the Clerical Plan have assets of $68.8 million, $26.2 million, $21.7 million, and $13.4 million, respectively, as of January 1, 1987. The total unfunded liability for the Plans at the end of 1986 was approximately $621.3 million. Benefit accruals under all of the Plans were frozen as of December 31, 1983, as a condition of certain funding waivers granted by the Internal Revenue Service (IRS).[8]

IRS has granted Airways conditional waivers of the minimum funding requirements of the Plans for plan years 1980, 1981, 1982, 1983, and 1986. With respect to the Plans, the waivers for 1980, 1981 and 1982 entitled Airways to defer and fund over fifteen years a total of $146.2 million. The conditional waiver for the year 1983 in the amount of $35.6 million with respect to the Plans required early payment in lieu of a fifteen-year amortization program. Part of such amount was repaid in 1985, and the remaining portion was paid in the first quarter of 1986. The conditional waiver for the 1986 plan year amounts to $48.2 million, plus interest for a total of approximately $51.1 million.

Under the terms of the 1986 waiver which was conditionally granted by IRS on September 15, 1987, Airways could by March 15, 1988, either: (1) Obtain a prohibited transaction exemption from the Department which permitted the assignment of the Leasehold and the contribution in kind of the value of Airways' Leasehold interest to the Plans; or (2) make certain cash payments to the Plans. The waiver was conditioned on airways' pledging stock in World Services as collateral for amounts due under the minimum funding requirements. Subsequently, the IRS granted extensions to the 1986 waiver on the condition that certain cash payments were made to an escrow account on behalf of the Plans.

Most recently, the IRS by letter dated September 14, 1988, further modified the 1986 waiver by extending the deadline to January 15, 1989, and by reopening the 1983 waiver in the amount of $29.5 million. In connection with the reopening of the 1983 waiver, Airways agreed to restore, in full, the credit balance in the funding standard account by making periodic installment payments to the Plans of $4 million by October 15, 1988, $6 million by November 15, 1988, $9 million by December 15, 1988, and $10.5 million by January 15, 1989. Further, because the Leasehold had not been contributed to the Plans by September 15, 1988, Airways was obligated on that date to make a cash payment to the Plans totalling approximately $36 million, which included the amount previously held in the escrow account. It is represented that this $36 million dollar payment, together with the aggregate credit of approximately $29.5 resulting from the reopening of the 1983 funding waiver, and the extension of the 1986 conditional funding waiver amount, enabled Airways to satisfy in full its funding requirement under Section 412 of the Code for the 1987 plan year which was due on September 15, 1988.

As a condition of the 1986 funding waiver, Pan Am pledged for the benefit of the Plans the outstanding capital stock of World Services as collateral satisfactory to the Pension Benefit Guaranty Corporation (the PBGC) to secure the funding amount waived in 1986 and to secure a portion of previously waived contributions up to a maximum of $75 million. Subsequently, in reopening the 1983 funding waiver on September 14, 1988, in the amount of $29.5 million, the IRS required an additional security interest in the World Services stock be pledged in that amount, and increased the total security interest in favor of the Plans to $104.5 million. Under the terms of the pledge, the additional security interest in the amount of $29.5 million is to be released *pro rata* as installment payments are made to the Plans from October, 1988 through January, 1989. In addition, the Plans' original $75 million security interest in the stock of World Services is to be released, if either: (1) The Department grants an exemption for the subject transactions, or (2) Airways contributes an additional $60 million to the Plan on January 15, 1989.

3. Airways' principal base of operations is located at JFK in New York, where it operates ground facilities, including a major maintenance building and the Terminal. The Terminal in its present configuration provides 16 jet gates, plus a heliport, commuter aircraft, and plane-mate facilities for up to 26 aircraft. It is represented that there are 713,568 square feet of rental space in the Terminal, 102,432 square feet in roadways, and 49.38 acres of ground surrounding the Terminal. The Terminal also provides facilities to various concessionaires, restaurants, and other businesses which operate within the building. It is represented that the Terminal is unique in that it is the only major airport facility that permits international connections within a single building and which has its own U.S. Customs inspection area.

The Terminal was constructed by Airways during 1957–1960 at an historical cost of $20 million, substantially enlarged during the period 1970–1972 at a cost of $120 million, and updated in 1980–1984 for $40 million. Airways provided the equity funding for

[8] The applicant represents that the information provided is the most current available.

the Terminal construction and improvements under agreements with the City of New York (the City), and with the Port Authority of New York and New Jersey, formerly called the Port of New York Authority (the Port Authority), a corporate and politic body established by compact between the states of New York and New Jersey. The City retains title to the Terminal and the ownership of the Land underlying the Terminal but leases this Land to the Port Authority under a lease that expires at the end of 2015. The Port Authority in turn leases the Land to Airways on an exclusive long-term basis, pursuant to a lease (the Lease) which established the Leasehold estate for Airways in the Land and the Terminal.

4. The Lease was originally entered January 1, 1970, between Airways and the Port Authority. It is represented that the terms of the Lease and any amendments thereto were negotiated at arm's length between Airways and the Port Authority. The Port Authority's Lease with Airways stipulates a non-escalating rent of $1.68 million per year and expires in 1998. Under the provisions of the Lease, the Leasehold may not be assigned nor the Terminal sublet to another party without the Port Authority's consent and approval.

5. Airways proposes: (1) To sell to the Plans a portion of its Leasehold interest in the Land and the Terminal for a sales price which equals the $36 millon transferred by Airways to the Plans after September 14, 1988, and any additional contributions made to the Plans through the date on which the proposed transactions are consummated; (2) to contribute to the Plans the value of the Leasehold reduced by the sales price paid by the Plans to Airways for the above portion of the Leasehold; and (3) to sublease the Terminal from the Plans for the duration of the remaining term of the Leasehold which expires in 1998. To the extent the value of the Leasehold exceeds Airways' 1986 and 1987 plan year funding obligations, it is represented that the Plans will benefit from pre-funding of the 1988 minimum funding amount due in September 1989.

It is represented that at closing on the proposed transactions, the Port Authority will execute the following documents: (1) the assignment of the Leasehold to the Plans, and (2) an acknowledgment and consent to the assignment of the Leasehold, but only if the prohibited transaction exemption is granted by the Department. In addition, the Port Authority's consent is conditioned upon: (a) Airways and any subsequent occupants (or sublesses) of the Terminal participating in the cost of the extensive capital improvement program contemplated for JFK (the JFK 2000 Project) by the Port Authority; (b) any re-letting of the Terminal to one or more successor sublessees being subject to the consent and approval of the Port Authority; (c) the Port Authority and the Plans splitting 50–50 any rental received from any replacement sublessee, greater than the rental amount due the Plans from Airways; and (d) to the extent that scheduled aircraft arrivals of Airways or any successor are less than 60% of an agreed upon basic schedule, the Port Authority's having the right to require Airways or any successor to sub-sublease the under-utilized portion of the Terminal to other air carriers (hereinafter referred to as the Use or Lose Provision).

6. Pursuant to the terms of the proposed Sublease, Airways will operate the Terminal and pay to the Plans a fixed monthly rent of $2.78 million for the duration of the Leasehold. The Sublease will expire one day before the expiration of the term of the Lease in 1998. The proposed Sublease is a triple net lease, which places on Airways, the responsibility of all costs of care and maintenance, all taxes, and all insurance. Under the terms of the Sublease: (1) Airways will pay the first two monthly installments of rent on the date the Sublease is executed; (2) Airways shall have the right without the consent of the Plans to make alterations, improvements and additions to the Terminal, subject to certain limitations; (3) Airways shall have the right, subject to certain restrictions, to sub-sublet all or any part of the Terminal or assign its rights under the Sublease without the consent of the Plans; (4) Airways agrees to participate in the anticipated costs, construction, maintenance, and operation associated with the JFK 2000 Project, to the extent that Airways will be treated in the same manner as that received by all similarly situated passenger airlines at JFK; and (5) in the event Airways defaults on the payment of the rent and does not cure such default within sixty (60) days, the Plans have the right to terminate the Sublease at the end of any month upon thirty (30) days notice to Airways. As addressed in paragraph ten below, Fiduciary Services, in its capacity as independent fiduciary for the Plans, has reviewed and approved the terms of the Sublease on behalf of the Plans.

7. It is represented that the rental income from the Sublease and the ownership interest in the Leasehold will be allocated in a manner consistent with the relative liabilities and funding requirements of the Plans. If such allocation is employed, the range of percentages of the assets of each of the individual Plans involved in the sale and contribution of the Leasehold is estimated to be from 6.8% to 32.9%, with the aggregate value of the sale and contribution of the Leasehold constituting approximately 28.8% of the cumulative assets of the Plans.

Airways represents: (1) That such an allocation is fully consistent with the funding needs of the Plans, (2) that any other arrangement would result in an imposition of an earlier cash contribution upon Airways, and (3) that such allocation is consistent with the funding waivers granted to Airways and the corresponding pledge agreement with PBGC.

Because each payment of rent will increase the non-Leasehold assets of the Plans individually and collectively, Airways states that it is reasonable to expect the interest in the Leasehold allocated to each of the Plans to decline within a short period of time. In addition, Airways states that given its financial situation, denial of the contribution of a valuable asset such as the Leasehold to the Plans would be adverse to the best interest of the participants and beneficiaries.

8. At the request of Fiduciary Services, the independent fiduciary for the Plans, Arthur D. Little, Co. (Arthur Little), an independent consultant, was retained by Airways to value the Leasehold. It is represented that Arthur Little has experience in all facets of the aerospace industry, including specific work in preparing valuations. It is further represented that Arthur Little has no common directors nor any existing relationships with Airways or the Plans. Arthur Little states that projects conducted in the past on behalf of Fiduciary Services represented less than one percent (1%) of the total revenues of Arthur Little over the periods in which it was involved in such projects.

The record contains several appraisals of the value of the Leasehold prepared by Arthur Little, some of which employ different methodologies and which arrive at different values. In the most recent appraisal, Arthur Little estimated the fair market value of the Leasehold as of October 31, 1988, to be $172 million. Arthur Little states that in estimating the value of the Leasehold, it interviewed officials at Airways and at the Port Authority, toured the Terminal facilities, and had access to all publicly available information relevant to the valuation of an airport terminal. In addition, Arthur Little represented that

it had in-house expertise and data on which it based its estimates of the revenues and expenses associated with the Terminal.

It is represented that the methodology used in the appraisal attempted to project income statements for the Terminal to determine expected annual net cash flows for the remainder of the Lease term. Income for the Terminal was derived from a number of sources, including certain fees charged to other airlines for use of similar terminals and rental rates for square footage at another JFK terminal recently negotiated between the Port Authority and another airline. Net cash flows were derived by subtracting actual Terminal expenses from income. It is represented that the present value of these cash flows, when appropriately discounted, represented the fair market value of the Leasehold. In the appraisal, Arthur Little also: (a) Assumed the subject transactions would occur on December 15, 1988; (b) included operating and concession revenue in the calculation of Terminal income; (c) included the cost of an ongoing asbestos operation and maintenance program (see paragraph 9 below) and the immediate cleanup of certain asbestos containing material; and (d) assumed a 14.5% discount rate for risks associated with the Leasehold.

Fiduciary Services has reviewed the income projections used in the most recent appraisal by Arthur Little and concluded that they are reasonable, based on knowledge of the Terminal, demand studies, and familiarity with the airline industry. Fiduciary Services also concluded that an appropriate discount rate for valuation purposes should reflect the risks of (a) subleasing the Terminal to Airways given its financial condition; (b) holding an asset which comprises a significant portion of the assets of each of the Plans and which cannot be sold to or financed by a third party; (c) not receiving full and timely rental payments upon default by Airways and having to find a successor sublessee; and (d) not receiving full and timely rental payments, if Airways should go into bankruptcy and the transaction is treated as a secured financing, rather than a sublease. Based upon these factors, Fiduciary Services concluded that a discount rate of 14.5% was fair, producing a net present value of the Leasehold of $172 million. This, Fiduciary Services represents, equates to a return of 14.5% on the Plans' investment and contribution value and a monthly rental of $2.78 million.

9. In December 1987, Airways designated Connecticut National Bank (CNB) to act as independent fiduciary on behalf of the Plans with respect to the proposed transactions. However, on July 19, 1988, CNB confirmed to Airways that it would be unable to act as independent fiduciary for the Plans and gave as its sole reason for withdrawing its inability to quantify the economic implications of the presence of asbestos containing material in the Terminal. Subsequently, Fiduciary Services, a Delaware corporation, was retained by the Committee to act as independent fiduciary for the Plans in connection with the proposed transactions. Fiduciary Services engaged its own experts to review the findings associated with the existence of asbestos in the Terminal and concluded that the economic implications of the asbestos conditions can be quantified and that they are *de minimis*. Moreover, Fiduciary Services has negotiated with Airways to enter into an operational and maintenance program, the cost of which will be paid by Airways, in order to adequately monitor and control the asbestos containing material in the Terminal.

Fiduciary Services is a wholly owned subsidiary of Bear Stearns Companies Inc. (Bear Stearns Inc.) and is a registered investment advisor under the Investment Advisers Act of 1940. It is represented that Bear Stearns Inc., the parent company, will guarantee the performance and obligations of Fiduciary Services. Fiduciary Services represents it is qualified to act on behalf of the Plans with respect to the proposed transactions in that it was established in 1986 to serve as an independent fiduciary for employee benefit plans covered by the Act and to perform various other investment-related functions for such plans and other institutional investors. Fiduciary Services includes among its experiences advising plans on asset allocation, diversification and liquidity, assessment of investment opportunities, selection of investment managers, trust and custody of plan assets, and compliance with the requirements of the Act bearing on investment decisions and related fiduciary matters. It is represented that Fiduciary Services typically performs its functions through the use of its own expertise and resources and those of its affiliates, such as Bear Stearns & Co., Inc. (Bear Stearns & Co.).

It is represented that Bear Stearns & Co. is the nation's eighth largest broker-dealer and investment bank with $32 billion in assets, as of April 30, 1988, and $1.4 billion in shareholders' equity and long-term debt. Bear Stearns & Co. has 13 offices worldwide and approximately 6,000 employees. Bear Stearns & Co. offers a range of resources and expertise in financial markets and investment matters generally, including departments in corporate finance and business valuation, financial restructuring, mergers and acquisitions, research, equity and fixed income trading, real estate, economic and portfolio analysis, and asset management. Bear Stearns & Co. has rendered opinions regarding numerous proposed investment transactions between pension plans covered by the Act and their corporate sponsors.

Fiduciary Services states that it is independent in that there is no prior or existing relationships with Airways or the Plans, other than the services to be performed as the independent fiduciary in connection with the proposed transactions. Fiduciary Services has stated that Bear Stearns & Co. has acted and will act from time to time as a broker for outside investment managers of various employee benefit plans sponsored by Airways, including the Plans. The total amount of commissions Bear Stearns & Co. earned in 1987 as broker for outside investment managers for transactions on behalf of the Plans and other plans sponsored by Airways is represented to be approximately $37,000. It is represented that such commissions represent less than one percent (1%) of the commission income and total revenues of Bear Stearns, Inc., the parent corporation of Bear Stearns & Co.

In addition to hiring Fiduciary Services to act as independent fiduciary on behalf of the Plans, Airways has also retained Mellon Bank to act as on-going trustee (the Trustee) of those assets of the Plans involved in the proposed transactions. It is represented that Mellon Bank is independent of Airways and the Plans, except that: (a) It provides services to another pension plan sponsored by Airways for its pilots, and (b) is a lessor to Airways, under a lease which expires in 1989, of a single B–747 aircraft which Mellon Bank owns for its own account. It is represented that the fees to be paid to Mellon Bank with respect to the proposed transactions, the rental payments made by Airways on the B–747 aircraft, and the fees paid by Airways to Mellon Bank in connection with services provided to the pilot's plan, in the aggregate, are less than one percent (1%) of the revenue of Mellon Bank. The Committee represents that it has determined that the fees proposed by Mellon bank are reasonable for the services contemplated and that Mellon Bank is qualified to perform those services.

By letter dated September 12, 1988, Fiduciary Services formally consented to its designation by the Committee as independent fiduciary. Fiduciary Services acknowledges that it will be a fiduciary within the meaning of section 3(21) of the Act, and in connection with the proposed transactions, will be subject to the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Committee in its agreement with Fiduciary Services (the I/F Agreement) has delegated authority to Fiduciary Services to decide whether the Plans should enter into the proposed transactions, and if so, to instruct the Trustee, to implement such decision. In addition, Fiduciary Services is authorized to enforce and monitor compliance with the terms of the Sublease on behalf of the Plans throughout the duration of the proposed transactions. Under the I/F Agreement, Fiduciary Services is empowered to take such actions and to direct the Trustee, as in its absolute discretion, it deems necessary or appropriate to protect the best interest and rights of the Plans and their participants and beneficiaries with respect to the proposed transactions. Fiduciary Services may employ, as it deems advisable and in the best interests of the Plans, such legal counsel, accountants, appraisers, and agents to assist in connection with the operation, preservation, management, defense, custody, and administration of the Leasehold and the property underlying the Leasehold.

It is represented that Fiduciary Services shall receive reasonable out-of pocket expenses properly and actually incurred in connection with the performance of its duties as independent fiduciary, including reasonable fees of outside counsel, accountants, appraisers, and other independent agents employed by Fiduciary Services. Further, it is represented that, except to the extent that Airways shall have paid, the compensation for Fiduciary Services and the Trustee shall be paid out of the assets of the Plans held in the trust fund.[9] it is also represented that the Committee has considered the primary liability of the Plans to pay the fees, expenses, and compensation to Fiduciary Services and the Trustee in the event Airways is unable to make such payments. The Committee has determined that in the event of financial failure of Airways, the need for services to be rendered by an independent fiduciary to the Plans, the desirability of having Plans' assets held by parties other than Airways, the need to maintain continuity of operations, income collection, and benefit disbursements for the Plans, justifies the fees, expenses, and compensation for which the Plans will be liable. The Committee has further determined that such fees, expenses, and compensation are reasonable and not less favorable in the aggregate to the Plans than the fees, expenses, and compensation which either: (1) Were quoted by other candidates considered by the Committee for appointment as independent fiduciary with respect to the proposed transactions, or (2) would be borne by the Plans if the Plans were required to engage any similar independent parties to perform comparable services.

The Committee may remove Fiduciary Services at any time by giving written sixty (60) days notice to that effect; provided however that Fiduciary Services may not be removed at any time that the Trustee, is entitled to exercise rights and remedies as a result of a default by Airways of its obligations under the Sublease. Fiduciary Services may resign by giving sixty days written notice to the Committee.

10. Airways has represented that it considers the transactions to be unitary in nature; and thus, has stated that it will not make the in kind contribution without the Plans' purchasing in part the value of the Leasehold and entering into the Sublease of the Terminal for the duration of the Leasehold term. Fiduciary Services has reviewed Airways representations as to the unitary nature of the proposed transactions and has represented that when taken as a whole the transactions would provide the Plans a prudent investment under the circumstances. Nevertheless, Fiduciary Services has examined each of the proposed transactions independent of the others to ensure that each transaction meets the statutory criteria of section 408(a) of the Act. Fiduciary Services represents that in carrying out this responsibility either the staff of Fiduciary Services or experts under Fiduciary Services' supervision reviewed extensive information and documentation regarding the proposed transactions. After reviewing such information, Fiduciary Services has determined that each of the proposed transactions is administratively feasible, in the best interest of the Plans, and protective of the Plans and their beneficiaries and participants.

In order to insure the administrative feasibility of the proposed transactions, Fiduciary Services has agreed to prepare and render annually an accurate and detailed accounting of all transactions and other actions taken by it for each of the Plans with respect to the proposed transactions. In addition, the Trustee, will account separately for each of the Plans' interests in the Leasehold and the attributable earnings. Fiduciary Services will keep all accounts, books, and records relating thereto which will be open to inspection and audit at all reasonable times by an accountant designated by the Committee, the Trustee, Airways, and their respective agents. Finally Fiduciary Services is broadly empowered to instruct the Trustee to enforce the terms of the proposed transactions and take necessary action to protect the Plans' rights.

With respect to the in kind contribution of the value of the Leasehold to the Plans, Fiduciary Services has determined that such contribution presents the Plans with a unique opportunity to operate with substantially greater assets than the Plans would otherwise have and provides enhanced security for the Plans' participants and beneficiaries. Fiduciary Services states that the increase in the Plans assets would provide a justification for the contribution, even if Airways were in better financial condition. However, given Airways' troubled financial position, in the opinion of Fiduciary Services, the reasons supporting the in kind contribution are all the more compelling.[10]

With respect to the effect of the contribution on the Plans' diversification of assets and liquidity requirements, Fiduciary Services has concluded that the concentration of assets of the Plans in the Leasehold will not present an undue risk and the cash stream generated by the Sublease will enable the Plans to increase gradually the diversification of their investments. With respect to the Plans' liquidity requirements, Fiduciary Services has determined that the other assets of the Plans together with the cash stream generated by the Sublease will be more

[9] The Department notes that the statutory exemption under section 408(b)(2) of the Act regarding the provision of services by a party in interest to a plan is applicable, provided no more than reasonable compensation is paid for such service.

[10] The 1987 Annual Report on Airways and the Form 10K filed with the Securities and Exchange Commission reveal net losses and operating losses of $274.6 million and $113.3 million, respectively. According to the same reports, shareholders equity in Airways at the end of 1987 was a negative $245 million.

than sufficient to meet the liquidity requirements over the next 9½ years.

With respect to the purchase of a portion of the value of the Leasehold by the Plans, Fiduciary Services has concluded that it is in the interest of the Plans and the Plans' participants and beneficiaries. The reasons given by Fiduciary Services in support of this conclusion are: (a) The sale will result in the Plans receiving a significant prefunding amount of approximately $57 million that would otherwise not be available; (b) the Plans will be placed in as good or possibly better position in the event a bankruptcy proceeding is brought by or against Airways; and (c) the rental stream under the terms of the Sublease will provide the Plans with a favorable return on the investment.

Fiduciary Services has determined that the contribution and the purchase of a portion of the value of the Leasehold are protective of the rights of the Plans' participants and beneficiaries, because: (a) The Leasehold has been valued by Arthur Little, an independent appraiser, (b) the appraisal has been reviewed by Fiduciary Services, and (c) the triple net Sublease and the advance payment of two months' rent will minimize the risk that any Plans' assets will need to be expended for initial maintenance or other such expenses. In addition, Fiduciary Services will be responsible for monitoring Airways' compliance with the Sublease and for instructing the Trustee to take appropriate action to protect the Plans' interests as sublessor. It is represented that in order to protect the interests of the Plans, the assignment and all other necessary documentation of the proposed transactions, including the Sublease and the acknowledgement and consent to the assignment of the Leasehold from the Port Authority, will promptly and properly be recorded in accordance with state and local law. Also, Fiduciary Services will take all necessary steps to ensure that the interests of the Plans are protected if the Leasehold and the Sublease are viewed as a mortgage providing security for the funding obligations of Airways. It is represented that the Plans' interests are protected against property damage and general liability through insurance policies maintained by Airways, pursuant to the terms of the Sublease.

Fiduciary Services has concluded that the entry into the Sublease with Airways is in the best interest of the Plans. In making this decision, Fiduciary Services took into consideration the fact that (a) Airways has agreed to Sublease the Terminal for the approximately 9½ years remaining in the term of the Leasehold; (b) the entry into the Sublease will commence simultaneously with the other two proposed transactions and will avoid any delay which is particularly important with a wasting asset such as the Leasehold; (c) the responsibilities and expenses of operating the Terminal, including the rent due to the Port Authority under the Lease of the Land will be borne by Airways; (d) Airways is in the best position to discharge such responsibilities because it is familiar with the Terminal and its operations; and (e) the amount of rent to be charged to Airways is calculated to allow the Plans to recover the appraised value of the Leasehold ($172 million) plus a return of 14.5 percent on such value. As noted above, Fiduciary Services has concluded that a rate of return of 14.5 percent is fair and reasonable. Such rate is representative of the risks associated with the proposed transactions, and is particularly desirable to the Plans in view of their underfunded status.

11. Fiduciary Services has determined that the principal risks to the Plans involving the Sublease are the possibility of: (1) A default by Airways under the provisions of the Sublease; and (2) the bankruptcy of Airways during the term of the Sublease. Fiduciary Services states that it will take measures to ensure that in either case the Plans' interests are protected. Despite the potential risks, Fiduciary Services has concluded that there is a reasonable likelihood that the Plans would ultimately realize a substantial portion of the value of the Leasehold in the event of a default by Airways or a bankruptcy proceeding involving Airways.

Specifically, with respect to a default, the Sublease permit Fiduciary Services on behalf of the Plans, either to cure the default and then recover against Airways or to evict Airways in order to regain possession of the Terminal and then rent the premises to a successor sublessee. Fiduciary Services has determined, based on knowledge of the airline industry, and a review of demand studies regarding JFK, that the Terminal is in a very desirable location in one of the busiest metropolitan airports in the world. It is also represented that the Plans and Port Authority share a mutual interest in keeping the Terminal occupied and that the Port Authority will assist in any efforts to keep the Terminal operating as close as possible to full capacity. Fiduciary Services conservatively estimates the Plans may experience a delay of six months in locating a successor sublessee, if Airways defaults, but represents that this factor is reflected in the 14.5 percent discount rate used in the valuation of the Leasehold prepared by Arthur Little. Given that the volume of international passenger traffic will continue even in the absence of Airways, Fiduciary Services beleives that there is a reasonable likelihood that a successor to Airways could be found at a level of rent comparable to that agreed to by Airways.

To the extent a successor pays more rent than Airways, the Port Authority and the Plans have agreed to split the increase on a 50–50 basis. Fiduciary Services states that provisions for sharing profit on subleasing are common in commercial leases and that receipt of a 50 percent portion of any increase in rent can only be an added benefit for the Plans.

Fiduciary Services also has considered the risks to the Plans in the event of a bankruptcy petition being filed by or against Airways during the term of the Sublease. After reviewing the current financial condition of Airways and discussing this issue with representatives of Airways, Fiduciary Services has determined that there is little risk of Airways filing or having filed against it a bankruptcy petition in 1989. Nevertheless, Fiduciary Services states that the risk of Airways' filing for bankruptcy at some point and the possible effects of such bankruptcy on the Plans was factored into the determination of the value of the Leasehold and in the choice of the appropriate rate of return (14.5%) on the Plans' investment.

If under the bankruptcy laws the relationship between Airways and the Plans is characterized as a Sublease, Fiduciary Services represents it will take any and all measures to ensure that the Plans' interests are protected, including commencing proceedings under the Bankruptcy Code to require Airways either to assume or reject the Sublease within sixty (60) days of the commencement of the proceeding, as required by law. In the opinion of Fiduciary Services, it is unlikely that Airways would seek to reject the Sublease, and if Airways were to assume the Sublease, Airways must satisfy all obligations under the terms of the Sublease, including the rental payments. Even if Airways were to reject the Sublease, it is represented that the Plans retain the right to re-let the Terminal to another tenant subject to the Port Authority's consent.

Fiduciary Services has also considered the consequences should the relationship between Airways and the Plans be treated in a bankruptcy

proceeding as a secured financing or mortgage. Because the Leasehold is a wasting asset, Fiduciary Services represents that the Plans should have a reasonable prospect of demonstrating that "adequate protection" is warranted to protect the Plans' secured claims and that such protection may be provided in the form of cash payments, additional or replacement liens, or some other appropriate measures.

Fiduciary Services has also considered the likelihood and effect of a possible avoidance of the proposed transactions based on a finding that such were considered either preferences or fraudulent conveyances under the bankruptcy laws. Because fair value will be given for the Leasehold, Fiduciary Services has been advised by counsel that the Plans' exposure for a fraudulent conveyance is insignificant. However, to the extent that any portion of the value of the Leasehold was recovered from the Plans as a preference, the Plans would be able to assert only an unsecured claim for the avoided value. A preferential transfer is one taking place within ninety (90) days of the filing of a petition in bankruptcy. Fiduciary Services maintains that to the extent granting the proposed transactions sufficiently delays (even if it does not ultimately preclude) the filing of a bankruptcy petition by or against Airways, the period for avoiding contributions to the Plans as preferences will have passed, thus protecting the Plans' assets.

Finally, Fiduciary Services compared the relative positions of the Plans in the event that a bankruptcy petition were filed against Airways before or after the proposed transactions are granted an exemption. Fiduciary Services notes that the Plans could be worse off if Airways enters bankruptcy between the date the proposed transactions occur and the date when the waiver payments otherwise would have been paid on January 15, 1989. However, because in Fiduciary Services' opinion the chances are small of Airways entering bankruptcy in1989, it believes that in the event thereafter of bankruptcy by Airways, the Plans would likely be as well or possibly better positioned with the Leasehold and the Sublease than without them. In any case, Fiduciary Services believes that in the event of bankruptcy the likelihood of the Plans receiving continued income through rental payments under the Sublease is probably greater than the likelihood of the Plans receiving income through continued contributions to the Plans from Airways, if the proposed transactions are not granted.

12. Fiduciary Services reviewed the terms of the Sublease, and the conditions imposed by the Port Authority in the acknowledgement of consent and assignment of the Leasehold in order to determine whether any such terms and conditions, specifically those relating to: (1) The allocation of the costs for the JFK 2000 Project, (2) the Use or Lose Provision, and (3) the agreement to split excess rent between the Port Authority and the Plans, will affect the value of the Leasehold. After examining said relevant documents, Fiduciary Services concluded that the terms of the assignment of the Leasehold, the consent of the Port Authority, and the Sublease are similar to those that would have been negotiated at arms' length by unrelated third parties. It is represented that Airways or its successor, and not the Plans, will bear the cost of the JFK 2000 Project. Because the cost of the JFK 2000 Project will not be borne by the Plans, and because under the JFK 2000 Project the Terminal will not be disadvantaged as compared to other terminals at JFK, Fiduciary Services believes that there should be no adverse effect on the value of the Leasehold. Further, in the opinion of Fiduciary Services the Use or Lose Provision in the Sublease will not affect the Lease between the Port Authority and the Plans, nor the value of the Leasehold, and will only require Airways or its successor to find sub-subtenants for the Terminal. Finally, Fiduciary Services believes that the Plans can only benefit from receiving a percentage of any increased rental paid by a successor of Airways.

13. In summary, the applicant asserts that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because among other reasons:

(a) Fiduciary Services, as independent fiduciary for the Plans, has determined that each of the proposed transactions is in the best interest and protective of the Plans and their participants and beneficiaries;

(b) Arthur Little, a qualified independent appraiser has determined the fair market value of the Leasehold;

(c) Fiduciary Services has established a fair market value rental for the Sublease of the Terminal by the Plans to Airways;

(d) Fiduciary Services also has reviewed, approved, and will monitor and enforce the terms of the Sublease between the Plans and Airways;

(e) Revenue from the rental payments made by Airways under the Sublease will be used to diversify the Plans investment portfolio;

(f) The contribution and purchase of a portion of the value of the Leasehold are one-time transactions;

(g) The Plans will receive a significant amount of prefunding from the in kind contribution of the Leasehold;

(h) The Plans will make a 14.5% return on their investment in the purchase of a portion of the Leasehold and contribution of the remaining portion of the Leasehold; and

(i) Fiduciary Services has determined that the terms of the Sublease are similar to those negotiated at arms' length between unrelated third parties.

For Further Information Contact: Angelena C. Le Blanc of the Department telephone (202) 523–8883. (This is not a toll-free number.)

Spertus College of Judaica Pension Trust (the Plan) Located in Chicago, Illinois

[Application No. D–7610]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the past cash sale of certain securities (the Bonds) by the Plan to Spertus College of Judaica (the Employer), provided that the Plan received no less than the fair market value of the Bonds on the date of sale.

Effective Date: If granted, the proposed exemption will be effective January 28, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase plan. It has 48 participants and, as of June 30, 1987, net assets of $670,597. The trustees (the Trustees) of the Plan are Ezra Sensibar and Dr. Howard A. Sulkin. Ezra Sensibar is also a trustee of the Employer, but is neither an employee of the Employer nor a participant in the Plan. Dr. Howard A. Sulkin is the President and Chief Executive Officer of the Employer and is a participant in the Plan. The Employer is a tax exempt organization under section 501(c)(3) of the Code.

2. Pursuant to the recommendation of a committee of Plan participants, the Plan, in January 1987, was in the process of liquidating its investment portfolio for

the purpose of investing its assets in a TIAA–CREF (TIAA) group annuity contract. On January 27, 1987, the Trustees of the Plan were made aware that if the total vested funds of the Plan were deposited with TIAA by January 30, 1987, the Plan assets would receive 1986 vintage treatment rather than 1987 vintage treatment. The applicant represents that the term vintage, as used here, means the portion of the annuity accumulation resulting from premiums paid and additional amounts credited during a specific period. The Trustees anticipated that the 1986 vintage would yield a higher return than the 1987 vintage and, in fact, it did yield a return ½% more than that in 1987.

3. In order to take advantage of the offer by TIAA, the Plan needed to dispose of the Bonds immediately. The first bond was a $50,000 par value Federal National Mortgage Association mortgage backed trust certificate (FNMA Bond) and the second was a $50,000 par value corporate bond issued by Citicorp (Citicorp Bond). The FNMA Bond earned interest at an annual rate of 8.65% and matured in March, 1990. The Citicorp Bond earned interest at the rate of 10.5% and matured in October, 1990.

4. On January 28, 1987, the FNMA Bond had a quoted value of $52,875, using the average of the bid and asked quotations in the Wall Street Journal. In addition, there was accrued and unpaid interest of $1,635.21 owed to the Plan on the FNMA Bond. The Citicorp Bond was not actively traded and no daily price quotation was available. However, the Plan trustees contacted the Plan's financial consultant, Merrill, Lynch, Pierce, Fenner & Smith (Merrill Lynch), who valued the Citicorp Bond in the Plan's portfolio at the time of the transaction at $51,722.50. In addition, accrued and upaid interest of $1,495.89 was owed to the Plan on the Citicorp Bond.

5. The applicant represents that Merrill Lynch advised the Plan that it was too late to liquidate the Bonds on the open market, since the normal settlement time for such transactions was five business days. Further, even if the Bonds could be liquidated on the open market, the commission costs would be particularly high because of the small odd-lot amount of the Bonds.

On January 28, 1987, the Employer offered to purchase the Bonds from the Plan for $108,000 in cash, which offer was reviewed and accepted by the Plan's Trustees. The Plan sold the Bonds to the Employer for their fair market value of $52,875.00 and $51,722.50, respectively, for a total purchase price of $104,597.50. In addition, the Employer paid the Plan $3,131.10 representing the accrued interest due on the Bonds. The difference between the $108,000 in cash transferred to the Plan and the combined fair market value plus accrued interest on the Bonds ($107,728.60) of $271.40 was treated as a contribution to the Plan for the Plan year ended June 30, 1987. The applicant represents that the Plan bore no expenses with respect to the transaction.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because:

(a) The Plan was able to sell the Bonds at their fair market price; (b) the Plan bore no expenses with respect to the sale; (c) the price of the FNMA Bond was determined by reference to the quotations listed in the Wall Street Journal and the price of the Citicorp Bond was determined by an independent third party; and (d) the immediate sale of the Bonds for cash allowed the Plan to invest its funds in a group annuity contract in sufficient time to secure the highest rate of return available under such contract.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Money Purchase Pension Plan and Trust of the Edmonds Family Medicine Clinic (the Plan) Located in Edmonds, Washington

[Application Nos. D–7700 and D–7701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the assumption and immediate repayment of a mortgage note (the Note) by Robert A. Bettis, M.D. (Dr. Bettis) to his individually directed separate account in the Plan, provided that the amount paid to Dr. Bettis' individual account in the Plan is no less than the greater of the unpaid principal balance of the Note plus any accrued interest due as of the date of assumption, or the fair market value of the Note as of the date of assumption, as established by an independent and qualified appraiser.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan which had ten participants as of July 1, 1988. As of July 31, 1987, the Plan had assets of $461,844. Dr. Bettis' account in the Plan had a balance of $120,446 as of July 31, 1987.

The Plan is sponsored by Edmonds Family Medicine Clinic, P.S., (the Clinic), which proves medical services in Edmonds, Washington. The five trustees for the Plan are Robert B. Bettis, M.D., Mark T. Hanson, M.D., Roger B. Olsson, M.D., Joseph G. Petrin, M.D., and Jeffrey F. Schlaemus, M.D., all principals in the Clinic. The Plan permits each participant the exclusive right to exercise control over the selection of assets in his or her account.

2. On February 16, 1983, the Plan purchased for Dr. Bettis' separate account a parcel of unimproved real property (the Real Property) in the Town of Lake Park, Chelan County, Washington, for $25,730.72 from Belden and Sandra L. Morgan, unrelated third parties. The Real Property did not produce any income during the time it was held by the Plan.

3. The Real Property was sold to Jordan and Mary Miller (the Millers), unrelated third parties, on December 31, 1987 for $35,000. The terms of purchase included a down payment of $1,500, delivery of a deed of trust for the benefit of Dr. Bettis' individual account in the Plan as security, and the Note in the amount of $33,500 at 12% interest per annum. The principal amount of the Note is due and payable on January 1, 1991, with installments of accrued interest due on January 1, 1989 and January 1, 1990.

4. Dr. Bettis and the Millers have now agreed that the Real Property will be sold to Dr. Bettis. It is proposed that Dr. Bettis take title to the Real Property from the Millers by making a down payment of $1,500 in cash to the Millers, assuming the Note and accelerating the Note by paying his individual account in the Plan in cash the total principal amount of $33,500 together with accrued interest due as of the date of the payment. Any transfer fees and other expenses will be paid by Dr. Bettis.

5. On June 1, 1988, Tom Walters, associate member of SREA, of Walters Appraisal Service of Chelan, Washington, stated that the fair market value of the Real Property was $35,000.

6. On August 23, 1988, Peter Unger, Vice President of the Bank of California in Seattle, Washington, an unrelated third party, stated that in his opinion the value of the Note does not exceed the

unpaid principal balance plus any accrued interest due.

7. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) Dr. Bettis' individual account in the Plan will receive all principal and interest due under the Note; (b) the transaction represents a one-time payment in cash to Dr. Bettis' individual account in the Plan, which can be easily verified; (c) Dr. Bettis will pay all fees and expenses due with respect to the transaction; and (d) Dr. Bettis, the only participant whose individual account is affected by this proposed exemption, has determined that the proposed transaction would be in the interest of his individual account in the Plan, and desires that the proposed transaction be consummated.

Notice to Interested Persons: Because Dr. Bettis in the only person in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register.**

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Operating Engineers Local No. 37 Pension Fund (the Plan) Located in Baltimore, MD

[Application No. D–7728]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase by the Plan of two parcels of improved real property (Parcel Two and Parcel Three), for the total cash consideration of $345,000, from Operating Engineers, Inc. (OEI), a party in interest with respect to the Plan, provided the amount paid by the Plan for Parcel Two and Parcel Three is not more than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a collectively-bargained, multiemployer pension plan having 1,563 participants and total assets of $76,027,686 as of March 31, 1988. The Plan is administered by a board of trustees (the Trustees) consisting of six members. The employee Trustees, who are appointed by Operating Engineers, Local 37 (the Union) acting through its Executive Board, are Messrs. James R. DeJuliius, Terry L. Bowman and John R. George. The employer Trustees, who are appointed by employer associations, are Messrs. Harry Ratrie (Chairman), Calvin H. Coblentz and Gus A. Lambrow. The Plan Administrator is Decision Science, Inc. acting through its employee, Mr. Russell L. Clark. Investment decisions for the Plan are made by Investment and Capital Management Corporation of Rolling Meadows, Illinois and Farragut Asset Management, Inc. of New York, New York.

2. The Union is an employee organization within the meaning of section 3(4) of the Act and a labor organization affiliated with the Building and Construction Trades Department of the AFL–CIO. The Union represents employees for purposes of collective bargaining on terms and conditions of employment in the geographic area which includes the State of Maryland, excluding Montgomery County and Prince George's County. The employees represented by the Union work primarily in the building and construction industry as well as related industries. The Union normally has collective bargaining agreements in effect with about 300 employers of which 180 employers are active at any time. The Union has approximately 2,235 members of whom approximately 550 members are retired.

3. OEI is a Maryland corporation that is wholly-owned and controlled by the Union. OEI's sole purpose is to hold title to real property.

4. Among the assets of the Plan is a parcel of improved real property (Parcel One), located at 5901–5905 Harford Road, Baltimore, Maryland. Parcel One consists of 10,500 square feet of commercial office space in a subdivided one story brick building. At the rear of Parcel One is a parking lot which is also owned by the Plan. The Plan purchased Parcel One and the parking lot on December 28, 1982 for $900,000 from Meatcutters Local 117 Building, Inc., an unrelated party. Since August 1988, the Plan has been leasing 2,681 square feet of office space in Parcel One and the parking lot to the Union for a monthly rental of $1,900 or $9.40 per square foot based upon market rates. The lease is for a term of five years and has two five year renewal options. The remaining 7,819 square feet of office space comprising Parcel One is occupied by the Plan for purposes of Plan administration.[11]

5. On behalf of the Union, OEI holds title to real property located at 5907–5913 Harford Road, Baltimore, Maryland. Parcel Two consists of 7,500 square feet of office space that is situated in the same one story building in which space has been allocated to comprise Parcel One. Behind Parcel Two is a parking facility which is also owned by OEI. OEI purchased Parcel Two on June 29, 1956 from an unrelated party for a purchase price of $35,000. Parcel Two is not presently encumbered by a mortgage. A unit comprising 3,218 square feet of office space is leased to the law firm of Peter G. Angelos, an unrelated party. The 4,282 square feet of remaining office space in parcel Two is occupied by the Union.

6. In addition to Parcel Two, OEI holds, on behalf of the Union, title to real property located at 3007 E. Glenmore Avenue, Baltimore, Maryland. Parcel Three, which adjoins Parcel One and Parcel Two, consists of a two-story frame dwelling and a rear parking lot. On August 4, 1980, OEI purchased Parcel Three for $50,315 from Mr. and Mrs. James B. Steedman, who were unrelated parties. Presently, Parcel Three is being leased to Ms. Judith L. McNemar (Ms. McNemar), an unrelated party, for a monthly rental of $250. Ms. McNemar uses Parcel Three as her personal residence and the lease expires in 1991. Parcel Three is not encumbered by a mortgage.

7. Due to increasing staff size and anticipated expansion of existing facilities, the Plan is in need of additional operating and parking space in which to conduct its activities. Because of these circumstances, the Trustees have determined that it would be appropriate for the Plan to purchase additional office and parking space from OEI, an entity owned and controlled by the Union rather than purchasing such space form an unrelated party. The Trustees believe that if the Plan purchases Parcel Two and Parcel Three form OEI, the Plan's participants will

[11] The applicants represent that the leasing of office space in Parcel One by the Plan to the Union satisfies the terms and conditions of Part C of Prohibited Transaction Exemption (PTE) 76–1 (41 FR 12740, 12745, March 26, 1976), and PTE 77–10 (42 FR 33918, July 1, 1977). The Department, however, expresses no opinion on whether the leasing arrangement complies with the provisions of PTEs 76–1 and 77–10. Accordingly, the Department is not proposing any exemptive relief beyond that offered by PTEs 76–1 and 77–10.

have the indirect benefit of obtaining reasonably-priced office space. Moreover, from an investment standpoint, the Trustees have determined that the economic value of having the Plan own Parcel One and Parcel Two will enhance the value and marketability of such property as a Plan investment since the Plan will then own the building in its entirety. Accordingly, the Trustees request an administrative exemption from the Department to permit the Plan to purchase Parcel Two and Parcel Three from OEI.

8. The Plan will purchase Parcel Two and Parcel Three from OEI for the fair market value of such properties as determined by an independent appraiser. The consideration will be paid by the Plan in cash. The Plan will not be required to pay any real estate fees or commissions in connection therewith. After the proposed transaction is consummated, the deeds to Parcel Two and Parcel Three will be recorded to reflect the Plan's exclusive ownership of the subject properties.

9. In an appraisal report dated January 18, 1988, Mr. Robert V. McCurdy (Mr. McCurdy), C.R.E., M.A.I., S.R.E.A., determined the fair market values of Parcel Two and Parcel Three. Mr. McCurdy, who is unrelated to the parties involved in the proposed transaction, is affiliated with the real estate consulting firm of Robert V. McCurdy and Company of Baltimore, Maryland. On January 1, 1988, Mr. McCurdy placed the fair market value of Parcel Two at $280,000 and Parcel Three at $65,000 or an aggregate consideration of $345,000.

10. Also subsequent to the proposed sale, the Trustees anticipate that the Plan will continue leasing office space in Parcel Two to the unrelated law firm for an indeterminate period. Similarly, but until 1991, the Plan will continue leasing Parcel Three to Ms. McNemar. According to the exemption application, the Trustees do not intend to allow the Plan to lease office space in either Parcel Two or Parcel Three to the Union or to other parties in interest.

11. Mr. Francis Burch, Jr. (Mr. Burch) has been designated as the independent fiduciary with respect to the proposed transaction. Mr. Burch is a Certified Public Accountant who has been licensed in the State of Maryland since 1967. Mr. Burch is the principal in the firm of Burch and Company, Certified Public Accountants of Towson, Maryland. Approximately 25 percent of Mr. Burch's practice is related to providing auditing services to multiemployer pension, annuity, health, vacation and apprentice training plans for various trades. Mr. Burch represents that he is not related in any way to the Plan or to the Union and that he provides no services to either organization. Mr. Burch also states that he has consulted with counsel experienced with the Act regarding the duties, responsibilities and liabilities imposed by the Act on plan fiduciaries. As a result of this meeting, Mr. Burch represents that he acknowledges his duties, responsibilities and liabilities under the Act in serving as a fiduciary on behalf of the Plan.

Mr. Burch believes the proposed transaction is an appropriate investment for the Plan and is in the best interest of the Plan's participants and beneficiaries. Mr. Burch represents that the proposed transaction complies with the Plan's investment objectives. He states that the terms of the sale compare favorably with what would be considered normal business practice between unrelated parties inasmuch as the fair market values of the subject properties have been determined on the basis of an independent appraisal and the proposed sales terms require the Plan to make a lump sum cash payment to OEI. Moreover, Mr. Burch believes the value to the Plan and the Plan participants would be enhanced if the Plan were to acquire both properties. In particular, Mr. Burch notes that the Plan's exclusive ownership of the building comprising Parcel One and Parcel Two would enhance the building's value for future development or sale to a prospective purchaser. In addition, Mr. Burch states that by owning the entire building, the Plan would be in a better position to negotiate improved rates for contract and other services with various lessees since the existing duplication of services would be eliminated.

As the independent fiduciary, Mr. Burch states that it is his intention to review and monitor all contracts entered into by the parties from the inception of the proposed transaction until its consummation. In this record, Mr. Burch represents that he will represent the interests of the Plan. Mr. Burch also states that he will review all other documentation associated with the proposed transaction.

12. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (1) The purchase of Parcel Two and Parcel Three by the Plan will be a one-time transaction for cash; (b) the purchase price for Parcel Two and Parcel Three will be based upon the fair market values of the subject properties as determined by an independent appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; (d) the acquisition of Parcel Two and the adjoining Parcel Three will provide the Plan with a sound investment and reasonably-priced office and parking space; (e) by purchasing Parcel Two from OEI and combining it with Parcel One, the Plan will be ensuring the marketability of such property; and (f) Mr. Burch, who will serve as the independent fiduciary and monitor the transaction on behalf of the Plan, has determined that the acquisition of Parcel Two and Parcel Three is an appropriate transaction for the Plan and is in the best interest of the Plan's participants and beneficiaries.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Orloff, Lowenbach, Stifelman and Siegel, P.A. Employees' Profit Sharing Plan (the Plan) Located in Roseland, NJ

[Application No. D–7749]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the loan (the New Loan) by the Plan of $350,000 to Orloff, Lowenbach, Stifelman and Siegel, P.C. (the Employer), a party in interest with respect to the Plan; and (2) the guarantee of repayment of the New Loan by the principals of the Employer (the Principals), provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's-length transactions with an unrelated party.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 36 participants and total assets of $4,772,119 as of June 30, 1988. The trustees of the Plan are the nine principal shareholders of the Employer. The Principals make investment decisions for the Plan. The Employer is a law firm which maintains its offices at 101 Eisenhower Parkway, Roseland, New Jersey.

2. In 1982, the Employer moved from Newark, New Jersey to its present location where it leases 11,000 square

feet of office space (the Lease) from Roseland II Limited Partnership, an unrelated party. The Lease has an initial term of five years and allows three additional five year renewal options. To pay for certain expenses associated with the move, the Employer requested an administrative exemption from the Department. On February 11, 1983, the Department granted Prohibited Transaction Exemption (PTE) 83–24 at 48 FR 6430. PTE 83–24 permitted the Plan to lend $300,000 to the Employer (the Original Loan). PTE 83–24 also provided that the Principals guarantee the repayment of the Original Loan. The Original Loan was made on March 1, 1983. It has been amortized in monthly installments of principal and interest and is for a duration of 84 months. The Original Loan carries interest at the rate of one percent over the prime rate of First National State Bank of New Jersey and it contains a floor on the interest rate of twelve percent per annum. The Original Loan is secured by the accounts receivable (the Receivables) of the Employer as well as by the personal guarantees of the Employer's Principals. The Original Loan is being monitored by Mr. Irwin Gedinsky (Mr. Gedinsky) who is serving on behalf of the Plan as the independent fiduciary. As of August 31, 1988, the remaining principal balance due under the Original Loan was $64,285.

3. Due to the Employer's growth over the past six years and its anticipated future growth, the Employer represents that it is in need of additional office space. Consequently, the Employer has entered into an amendment to the Lease to incorporate an additional 3,750 square feet of space contiguous to the original space. The estimated cost relating to expanding into the new space is approximately $285,000 which consists primarily of leasehold improvements, fixtures, furnishings and office equipment. The Employer anticipates remaining at its present location for at least the next nine years and it may lease even more space in the same building.

4. To finance costs associated with the expansion of office space, the Employer proposes to borrow $350,000 from the Plan. The New Loan will be repaid in 84 successive monthly installments of principal in the amount of $4,166 which will be due on the last day of each calendar month the New Loan is in effect. Interest on the unpaid principal balance of the New Loan will be paid at the same time as each principal payment, at an annual rate equal to the greater of: (a) one percentage point above the base rate charged by First Fidelity Bank, N.A., New Jersey (First Fidelity) of Newark, New Jersey, on the first business day of such calendar month or (b) twelve percent. The interest rate will be adjusted monthly by Mr. Gedinsky, who has agreed to serve as the independent fiduciary for the New Loan. The New Loan may be prepaid at any time by the Employer without premium or penalty.

5. The New Loan will be secured by an assignment of the Employer's Receivables which presently serve as partial collateral for the Original Loan. The applicant states that at the time the New Loan is made, the Employer will repay the outstanding principal balance due under the Original Loan. As a result of the repayment, the Receivables securing the Original Loan will be released. The Employer will then execute and file a Form UCC–1 in order to perfect the Plan's first security interest in the Receivables.

6. The Receivables represent the amount due the Employer from bills that have been submitted by the Employer to its clients for previously rendered legal services performed by the Employer. On June 30, 1988, the Employer had total Receivables of $1,186,050. During the twelve month period from June 30, 1987 to June 30, 1988, approximately 75.7 percent of the Receivables outstanding on June 30, 1987 were collected, 3.6 percent were written off and 20.7 percent remained outstanding. By September 30, 1988, a total of 80.1 percent of the Receivables outstanding on June 30, 1987 were collected, 10.9 percent were written off as uncollectible and 9 percent remained outstanding. Between June 30, 1985 and June 30, 1988, the Employer collected over 90 percent of the Receivables that arose during the three year period.

7. At all times during the term of the New Loan, the Employer expects that the Receivables will be equal to at least 200 percent of the outstanding balance due under such loan. If the Receivables are ever less than 200 percent of the outstanding balance due of the New Loan, the Employer will post sufficient additional collateral acceptable to Mr. Gedinsky in order to maintain the 200 percent collateral to loan ratio. In addition, the employer warrants to own the collateral used to secure the New Loan free from adverse claims, security interest and other encumbrances, other than the security interest that the Plan would have in the collateral. Further, the Employer will bear all costs, if any, of appraisal fees in connection with valuing the Receivables and all servicing fees in connection with the New Loan.

9. As additional security for the New Loan, the Principals of the Employer will give their personal guarantees. As of October 26, 1988, the Principals had a combined net worth that was in excess of $8 million.

10. The Employer has discussed with First Fidelity, an unrelated party, potential financing arrangements it would extend to the Employer, in connection with the expansion of the Office space. First Fidelity is a major New Jersey bank with assets that are in excess of $20 billion. By letter dated October 12, 1988, First Fidelity indicated that it would make a loan to the Employer on substantially the same terms and conditions as the New Loan. First Fidelity explained that the duration of its loan to the Employer would be for 60 months with quarterly payments of principal and interest. The First Fidelity loan would be similarly secured as the New Loan and would not have a floor on the interest rate.

11. As explained above, Mr. Gedinsky will serve as the independent fiduciary for the New Loan. Mr. Gedisnky is a Certified Public Accountant with over 32 years of accounting experience. Mr. Gedinsky is affiliated with the accounting firm of Granet and Granet of Livingston, New Jersey where he serves as the senior tax partner. Mr. Gedinsky has served in the past as an executor and trustee of many estates and trusts and, at the present time, he is serving in such capacity for several entities. With respect to the Act, Mr. Gedinsky has advised his firm's clients regarding the design of pension and profit sharing plans, the administration of such plans (including the investment of plan assets) and compliance with the Act. Other than serving as the independent fiduciary for the Original Loan, Mr. Gedinsky has no relationship to either the Plan or the Employer. Mr. Gedinsky represents that he understands and acknowledges his duties, responsibilites and liabilities in acting as a fiduciary on behalf of the Plan.

Mr. Gedinsky represents that all payments under the Original Loan have been paid in a timely manner and that there have been no delinquencies. Mr. Gedinsky also states that the collateral to loan ratio under the Original Loan has always been maintained.

With respect to the New Loan, Mr. Gedinsky states that he has looked at the specific terms of such loan and he believes it is in the best interests of the Plan and its participants and beneficiaries because: (a) The proposed interest rate will be substantially higher than the interest rate the Plan would otherwise earn on the investment of

such funds; (b) the duration of the New Loan is fair and reasonable; and (c) the collateral securing the New Loan is sufficient and adequate to fully protect the interests of the Plan and its participants and beneficiaries. Mr. Gedinsky also represents that he has examined the overall Plan Portfolio, considered the cash flow needs of the Plan, considered the assets that might have to be sold to meet the liquidity requirements of the Plan, examined the diversification of the Plan's assets in light of the New Loan and analyzed the New Loan in terms of how it relates to the Plan's investment scheme. In addition to the duties described above, Mr. Gedinsky will monitor the terms of the New Loan to ensure monthly payments are made by the Employer. In this regard, Mr. Gedinsky will take all actions that are necessary and proper to enforce and safeguard the rights of the Plan and its participants and beneficiaries.

12. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The New Loan will be monitored by Mr. Gedinsky, the independent fiduciary, who believes such loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; (b) the New Loan will be secured by a first security interest in the Employer's Receivables, which have a value of more than three times the amount of the New Loan; (c) the New Loan will also be secured by the personal guarantees of the employer's Principals who have a combined net worth that is substantially in excess of the New Loan; (d) at all times throughout the duration of the New Loan the Receivables will represent 200 percent of the outstanding principal balance of such loan; (e) the New Loan will represent less than 8 percent of the assets of the Plan; and (f) the Employers will bear all costs, if any, in connection with the valuing of the Receivables and the servicing of the New Loan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Peruri S. Rao, Ltd., Retirement Plan and Trust (the Plan), Located in Libertyville, Illinois

[Application No. D-7750]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a certain parcel of unimproved real property (the Property) to Sankara Rao Peruri, M.D. (Dr. Peruri), a disqualified person with respect to the Plan, provided that the sales price for the Property is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of August 23, 1988, had one participant and total plan assets of $512,820. The trustees of the Plan, and the decision-makers with respect to Plan investments, are Dr. Peruri and his wife, Amar J. Peruri (together, the Trustees).

2. The sponsor of the Plan is Peruri S. Rao, Ltd. (the Employer). The Employer was an Illinois service corporation engaged in the practice of medicine in Grayslake, Illinois. The Employer has been dissolved and no longer exists as a legal entity. Dr. Peruri is the sole shareholder of the Employer and the only participant covered by the Plan.[12]

3. The Property is a 1.33 acre vacant lot in Kendler's Country Place Subdivision in Lake Forest, Illinois. The Plan purchased the Property on November 20, 1986, from the American National Bank and Trust Company of Chicago, an unrelated party, for the sum of $110,000. The Trustees state that the Plan acquired the Property as an investment and that the Property has never been leased to, or used by, a disqualified person with respect to the Plan. In addition, neither Dr. Peruri, nor any related party, own any property which is adjacent to the Property.

4. The Property was appraised on May 25, 1988, by Donald A. Engel, M.A.I. (Mr. Engel), an independent real estate appraiser in Chicago, Illinois, as having a fair market value of $200,000. Mr. Engel states that the Property is located in the western section of Lake Forest, Illinois, in an area which is now zoned to permit the construction of high quality, single family residences. Mr. Engel notes that this area, which was recently primarily an agricultural area, is now undergoing steady commercial and residential development.

5. The Trustees state that the Plan currently has a large unrealized gain on its investment in the Property. However, the Property does not produce any current income and real estate taxes must be paid annually. In addition, improvements to the subdivision in which the Property is located could cause special assessments to be made to the Plan, as owner, which would deplete the Plan's assets. Construction and use of a single family dwelling is the only type of building or activity permitted on the Property. The Trustees have determined that it would not be economically prudent for the Plan to finance the construction of a permitted single family dwelling for rental to third parties.

6. The applicant states that benefit accruals under the Plan were "frozen" as of February 1, 1983. The applicant states further that the Plan will be terminated in the near future and the assets of the Plan will be distributed. Dr. Peruri would like to be able to receive his distribution from the Plan in cash. The Property represents approximately 39% of the Plan's total assets. In this regard, Dr. Peruri states that he has considered the option of taking a distribution in kind of the Property as part of his total distribution of the Plan's assets. However, Dr. Peruri states that he wants to "roll over" his entire distribution from the Plan either to another qualified plan or to an individual retirement account (IRA). Dr. Peruri represents that he has had difficulty finding a corporate trustee that is willing to hold the Property in either an IRA or another qualified plan.

7. The Trustees represent that it would be in the best interests of the Plan to sell the Property. The Trustees state that a sale of the Property would relieve the Plan of the ongoing obligation to pay real estate taxes on the Property and would enable the Plan to reinvest the cash proceeds from the sale in more liquid and diversified investments. The Trustees state further that a sale of the Property would eliminate the anticipated costs to the Plan of assessments for improvements in the subdivision in which the Property is located.

8. Dr. Peruri proposes to purchase the Property from the Plan for $200,000 in cash, in accordance with Mr. Engel's appraisal. The Trustees believe that the proposed transaction would be in the best interests of the Plan because it would eliminate the need for the Plan to find a willing buyer for the Property. In addition, the Plan would not incur any brokerage fees or other expenses with respect to the proposed sale. The applicant states that Mr. Engel's appraisal would be updated as of the

[12] Because Dr. Peruri is the only participant in the Plan and the Employer is wholly-owned by Dr. Peruri, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

date of the sale to ensure that the Plan receives the most current fair market value for the Property.

9. In summary, the applicant represents that the proposed transaction would satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale would be a one-time transaction for cash; (b) the Plan would receive an amount which would be no less than the fair market value of the Property, as established by an independent, qualified appraiser; (c) the Plan would not pay any brokerage commissions or other expenses with respect to the sale.

Notice to Interested Persons: Because Dr. Peruri is the only participant in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of January, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89–379 Filed 1–6–89; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

Radiopharmacy Workshop; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) has planned to meet with members of the nuclear medicine community to discuss items of mutual interest. *Date and time of meeting:* Wednesday, January 25, 1989, at 8:00 a.m. *Location:* Room 318, Crystal Plaza #5, (Crystal City); 2211 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Norman L. McElroy, Medical, Academic and Commercial Use Safety Branch 6H–3, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 492–3417.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to obtain information on the practice of radiopharmacy, its associated regulatory framework and other related matters as they arise.

Conduct of the Meeting

Dr. John H. Austin, Acting Chief, Medical, Academic and Commercial Use Safety Branch, U.S. Nuclear Regulatory Commission, will conduct the meeting. Dr. Austin will conduct the meeting in a manner that will facilitate the orderly conduct of business.

The following procedures apply to public observation of the meeting:

1. At the meeting, questions may be asked only by participants, i.e., invitees and NRC staff.

2. Seating for the public will be on a first come-first served basis.

The meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a), Executive Order 11769, and the Commission's regulations in Title 10, Code of Federal Regulations, Part 7.

Dated at Washington, DC, this 4th day of January, 1989.

For the Nuclear Regulatory Commission.

John H. Austin,

Acting Chief Medical, Academic and Commercial Use Safety Branch.

[FR Doc. 89–353 Filed 1–6–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Co. of Colorado; Fort St. Vrain Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Exemption from the requirements of certain portions of 10 CFR Parts 2, 70 and 73 for Public Service Company of Colorado (the licensee) for the Fort St. Vrain Nuclear Generating Station, located at the licensee's site in Weld County, Colorado.

Environmental Assessment

Identification of the Proposed Action

On November 10, 1988, the NRC published in the **Federal Register** a final rule amending certain portions of 10 CFR Parts 2, 70 and 73. These amendments concerned increased safeguards requirements for the four NRC licensed fuel facilities possessing formula amounts of strategic special nuclear material.

In issuing this rule, the Commission determined that it should not apply to Fort St. Vrain and an exemption should be granted to the amendments pursuant to 10 CFR 73.5.

Need for Proposed Action

The exemption is needed to implement the Commission's intent that Fort St. Vrain not have to meet the increased safeguards requirements of the rule.

Environmental Impacts of the Proposed Action

With respect to radiological impacts on the environment, the proposed exemption does not in any way affect the operation of the Fort St. Vrain licensed facility. In fact, the exemption

allows the facility operation to remain unchanged.

The proposed exemption does not affect radiological or nonradiological effluents from the site and has no other nonradiological impacts.

Alternatives to the Proposed Actions

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The staff did not consult other agencies or persons in connection with the proposed exemption.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For information concerning this action, see the proposed rule (53 FR 45447) and the exemption which is being processed concurrent with this notice. A copy of the exemption will be available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Greeley Public Library, City Complex Building, Greeley, Colorado.

Dated at Rockville, Maryland this 30th day of December, 1988.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89–351 Filed 1–6–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27–48]

US Ecology, Inc.; Final Finding of No Significant Impact Regarding the Amendment in its Entirety of Special Nuclear Material License 16–19204–01

AGENCY: Nuclear Regulatory Commission.

ACTION: Final finding of no significant impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (NRC) is proposing to renew, pursuant to 10 CFR Part 70, the special nuclear material license (16–19204–01) which allows US Ecology Inc. to dispose of special nuclear material at its commercial low-level waste disposal facility on the Hanford Reservation near Richland, Washington.

(2) NRC Position

The staff has prepared an Environmental Assessment for the licensing action. Based on the Environmental Assessment, the staff does not plan to prepare an Environmental Impact Statement on the proposed action.

(3) Reasons for the Finding of No Significant Impact

The NRC staff of the Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards has reviewed the licensee's application for renewal of the special nuclear material license and has prepared Amendment 8 to NRC license No. 16–19204–01.

By means of reviews and analyses of material submitted by the licensee, the staff concludes that operations in accordance with the renewed license will result in no incremental adverse environmental impacts. This conclusion is documented in the Environmental Assessment for Renewal of Special Nuclear Material Disposal License at US Ecology, Inc.'s Hanford Facility, dated February 6, 1987, as supplemented November 18, 1988. In the assessment, the staff has evaluated the alternatives of 1) denial of the renewal application, 2) renewal on the basis of the original renewal application, and 3) renewal on the basis of an upgraded application incorporating staff suggestions for improvement.

The staff has concluded that, because the renewal does not grant the licensee the authority to dispose of greater or more concentrated quantities of SNM than is the current practice and yet does impose greater restrictions on the licensee with respect to operations, monitoring and closure, there will be no degradation of the environment associated with the renewal. This conclusion is based on the following findings:

(a) The renewal will result in more rigorous operational standards for receipt and disposal of SNM waste.

(b) The renewal will result in more rigorous requirements for verifying and reporting waste contents.

(c) The renewal will result in increased environmental monitoring by the licensee.

(d) The renewal will result in the development of an emergency contingency plan.

(4) Related Reference Material

In addition to the Environmental Assessment, referenced herein, the following references relate to the renewal of NRC License No. 16–19204–01.

U.S. NRC staff, Safety Evaluation Report for Renewal of NRC License No. 16–19204–01, February 1985.

U.S. NRC Staff, Environmental Impact Appraisal for Renewal of the Special Nuclear Material Disposal License at the Nuclear Engineering Company's Hanford Facility, January 18, 1980.

U.S. Ecology, Inc., Facility Standards Manual, Richland Low-Level Radioactive Waste Disposal Facility, Rev. O, January 13, 1987.

US Ecology, Inc. Richland Operational Procedures No. 1–66, dates vary.

Documents are available for public inspection, and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Local Public Document Room located at the Richland Public Library, Swift and Northgate Streets, Richland, Washington.

Dated at Rockville, Maryland, this 29th day of December 1988.

For the Nuclear Regulatory Commisson.

Paul H. Lohaus,

Chief, Operations Branch Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 89–352 Filed 1–6–89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–260]

Tennessee Valley Authority; (Browns Ferry Nuclear Plant, Unit 2); Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Operating License No. DPR–52 which authorizes operation of Unit 2. This license provides, among other things, that Unit 2 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

Browns Ferry (BFN), Unit 2, is a boiling water reactor (BWR) at the licensee's site located near Decatur, Alabama.

II

By letter dated December 15, 1988, the licensee requested a temporary

exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 17 concerning electrical cable independence of electric power systems for BFN 2. As relevant to the licensee's request GDC 17 requires that " * * * The onsite electric power supplies, including the batteries, and the onsite electric distribution system, shall have sufficient independent, redundancy, and testability to perform their safety functions assuming a single failure * * *." The requested exemption would be temporary for Browns Ferry, Unit 2 and would permit movement of fuel back into the reactor vessel and hydrostatic testing. Compliance with GDC 17 will be achieved prior to Unit 2 restart.

III

During a recently completed program review of BFN electrical cable separation, TVA has concluded that electrical separation criteria as defined in GDC 17 have not been met in a number of instances in safety-related systems.

This review was initiated as a result of conditions identified by various other review programs (e.g., cable ampacity and drywell penetration modifications) being performed as part of the BFN restart effort. These conditions were first reported to the NRC in a Licensee Event Report dated October 22, 1988. By letter dated November 10, 1988 TVA committed to completing the discovery phase of the program and to correct the problems identified in support of fuel loading. By letter dated December 15, 1988 TVA stated that the first phase of the program identified approximately 250 discrepancies with GDC 17 electrical cable separation criteria for BFN. These discrepancies were evaluated for impact on systems required to be operational during fuel reload operations. TVA has determined that postulated electrical failures resulting from improper cable separation during refueling activities are highly improbable and do not pose an undue risk to the health and safety of the public. The licensee requested that fuel reload be permitted while TVA makes its best effort to complete all necessary work in the shortest time as reasonably possible without impacting plant safety.

BFN 2 has been shutdown for over four years. Consequently, the decay heat power output from the fuel is extremely low (i.e., less than 0.4 MW for the entire Unit 2 fuel pool) and the only fission product remaining in any significant quantity is Krypton 85 (Kr 85). During fuel reload and other activities leading to restart of the Unit 2 reactor, the following measures must be assured: (1) The fuel must be maintained cool, (2) the fuel must remain covered with sufficient water to ensure shielding for personnel on the refuel floor, and (3) in the event of fuel damage, the offsite and control room dose must be maintained within the guidelines established by 10 CFR 20.101 and 10 CFR 100.11.

The potential adverse effects due to the electrical cable separation discrepancies have been evaluated for credible events which would exist during reload and hydrostatic testing activities. The licensee has stated that based upon the analysis there are no common mode failures that could affect all of the cables with separation problems. Since the plant is shutdown with extremely low decay heat and with adequate cooling water in the fuel pool and reactor vessel, the potential for environmental extremes (i.e., harsh environments) from loss-of-coolant accidents (LOCA) and/or high energy line breaks is extremely low. Extensive fire related failures are not anticipated based on existing fire prevention/detection features and interim compensatory measures. These fire prevention/detection measures are either in place or to be implented by TVA before fuel reload. Raceways in the safety-related buildings are designed to survive seismic events without damage to required equipment; therefore, the potential for common mode failures from a seismic event is extremely low. The staff has also reviewed the potential for individual cable failure which could have an impact within the affected systems.

Due to the extremely low decay heat of the Unit 2 fuel, the time available for the plant staff to respond to transients is very long. Therefore, considering the low likelihood of an isolated electrical failure occurring because of improper cable separation, the diverse means and sources of water which the plant has to respond to the events (i.e., availability of RHR Service Water, Feedwater, and Control Rod Drive System Water) and the slow development of transients in the plant's current configuration, the licensee has concluded and the staff concurs that there is sufficient means to maintain the reactor core covered during fuel reload and during the time after reload until restart of Unit 2.

In the event that, during the time when the vessel head is removed and the cavity is flooded, active cooling for the water in the reactor vessel pool and/or spent fuel pool were lost (i.e., residual heat removal and fuel pool cooling systems), the licensee indicates it will take in excess of 40 days for the water to boil down to the TS limit for minimum shielding height (8½ feet) above the top of the fuel. Based on the guidance in Regulatory Guide 1.27, "Ultimate Heat Sink for Nuclear Power Plants," a period of 30 days is considered an adequate period of time to evaluate a situation of this nature (e.g., loss of cooling source) and to take corrective actions. Thus, the loss of active fuel pool cooling because of improper electrical cable separation does not represent a threat to nuclear safety.

To conservatively assess the potential impact on offsite doses, the consequences of a potential fuel handling accident concurrent with a failure to isolate secondary containment were evaluated by the licensee. The evaluation concluded that the site boundary and low population zone two hour doses are on the order of one hundred times lower than the limits specified in the BFN FSAR and NUREG-0800 and are thus on the order of one thousand times less than the 10 CFR 100.11 limits. A similar evaluation was conducted of the resulting control room operator dose consequences following a fuel handling accident. This analysis showed that the control room dose was on the order of 300 times lower than the 10 CFR 20.101 limits.

After fuel reload, the reactor vessel head will be installed in order to perform reactor vessel hydrostatic testing. This will involve pressurizing the reactor vessel and pressure boundary. During this test the control rods will remain inserted, and therefore, the reactor will not produce any power or increase fission product inventory. Following placement of the head on the vessel, the fuel in the vessel is isolated from the heat sink provided by the fuel pool. While in this configuration, the fuel in the vessel is cooled by the shutdown cooling mode of the Residual Heat Removal System. During hydrostatic testing, three potential accident scenarios were evaluated by the licensee: (1) Loss of active cooling to the water in the vessel, (2) inadvertent draining of the vessel, or (3) a LOCA during vessel hydrostatic testing.

Based upon a TVA/NRC telephone conference call, this evaluation determined that in the event of total core uncovery concurrent with loss of core cooling capability, it would take at least eight to ten hours before the fuel temperature would reach the point (2200°F) at which fuel damage is assumed to occur. Because of the extended time frame of this transient and since TVA will maintain required systems available for reactor water injection, core reflood for mitigating this postulated event can be accomplished in

a timely manner such that fuel damage and subsequent fission product release will be prevented. In addition, it will be TVA's operational philosophy during fuel load and restart that there will be as much equipment available as is possible to provide additional fuel cooling and/or water injection to the vessel.

The staff has reviewed the potential accident scenarios discussed above. We conclude that postulated electrical failures due to improper cable separation are highly improbable and do not pose undue risk to public health and safety.

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 further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

This exemption would provide BFN with only temporary relief from compliance with specific separation requirements of GDC 17 for those electrical cable separation discrepencies only recently identified by the BFN Electrical Separation Program. BFN is making good faith efforts to comply with the regulations and has implemented a two phase program to: (1) Ensure that the electrical cable configuration meets the BFN separation criteria committed to by the licensee in the BFN FSAR and evaluate any identified discrepancies for their impact on systems required to be operable for Unit 2 fuel reload, and (2) complete the program prior to Unit 2 restart. Completing the subject modifications prior to restart will bring BFN, Unit 2 (and common) systems in compliance with GDC 17.

Accordingly, the Commission hereby temporarily grants the exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion 17. In light of this determination and as reflected in the Environmental Assessment and Notice of Finding of No Significant Environmental Impact prepared pursuant to 10 CFR 51.21 and 51.32 (December 29, 1988, 53 FR 52880), it is determined that the intended action will have no significant impact on the environment.

A copy of the licensee's request for exemption dated December 15, 1988, and the Safety Evaluation dated December 30, 1988, related to this action, are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room located at Athens Public Library, South Street, Athens, Alabama 35611.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of December 1988.

For the Nuclear Regulatory Commission.

James G. Partlow,

Director, Office of Special Projects.

[FR Doc. 89-354 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 27-48]

US Ecology, Inc.; License Issuance

AGENCY: Nuclear Regulatory Commission.

ACTION: License issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has renewed, pursuant to 10 CFR Part 70, license No. 16-19204-01 issued to US Ecology, Inc. of Louisville, Kentucky, for disposal of special nuclear material (SNM) at US Ecology's low-level waste disposal facility located near Richland, Washington. The amended license incorporates more stringent conditions on facility operations, waste verification and reporting, environmental monitoring, and emergency planning. The NRC Staff has determined that issuance of this amended license will have no significant adverse impacts on health, safety, or the natural environment.

FOR FURTHER INFORMATION CONTACT: James A. Shaffner, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3450.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has renewed license No. 16-19204-01 issued to US Ecology, Inc. for disposal of special nuclear material (SNM) at US Ecology's low-level waste disposal facility located near Richland, Washington.

The renewed license supersedes the previous license authorizing disposal activities at US Ecology's facility in Richland, Washington. The amended SNM license incorporates, to the extent practicable, operations and monitoring requirements of 10 CFR Part 61. More stringent waste inspection requirements at the point of disposal are being imposed. Environmental monitoring requirements have been upgraded and action levels have been reduced. A site emergency contingency plan has been required of the licensee.

The State of Washington, Department of Social and Health Services (DSHS), has issued a renewed State license for disposal of source and byproduct material under the regulatory purview of the Department. The amendments to both licenses were closely coordinated such that the NRC and State licenses complement each other. Conditions of the NRC and State licenses have been made as consistent as possible to implement the new requirements and to minimize confusion on the part of waste generators, brokers and shippers. Conditions deemed to be duplicative of the regulatory responsibility of the State of Washington that are enforced through its license for source and byproduct material disposal have been eliminated from the NRC SNM License.

The NRC staff has prepared both a Safety Evaluation Report (SER) and an Environmental Assessment (EA) for this renewal. These documents have recently been supplemented to reflect current staff approaches for regulation of SNM disposal at LLW sites otherwise regulated by Agreement States. The documents, as supplemented, support the conclusion that issuance of the renewed license will have no significant adverse impacts on health, safety or the natural environment. Accordingly, a Finding of No Significant Impact (FONSI) was issued under separate cover.

Copies of the SER, as supplemented, EA, as supplemented, and all other documents relevant to the license renewal are available for public inspection at the Commission's Public Document Room, 2120 L Street, Lower Level, Washington, DC and at the Local Public Document Room located at the Richland Public Library, Swift and Northgate Streets, Richland, Washington.

The NRC finds that the issuance of the license complies with the requirements of the Atomic Energy Act of 1954, as amended, and the requirements of Title 10, Chapter 1, Code of Federal Regulations.

Dated at Rockville, Maryland, this 29th day of December, 1988.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Chief, Operations Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-355 Filed 1-6-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, January 25, 1989
Wednesday, February 1, 1989
Wednesday, February 8, 1989
Wednesday, February 15, 1989
Wednesday, February 22, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisons of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

December 22, 1988.

[FR Doc. 89–371 Filed 1–6–89; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP)

Generalized System of Preferences (GSP), and Review and solicitation of Public Comment: United States International Trade Commission Public Report Assessing Economic Impact of Proposed Modifications of the List of Articles Eligible for Duty-Free Treatment under the U.S. Generalized System of Preferences (GSP): 1988 Annual Review; and Timex Petition, Change in Date for Submission of Post-hearing and Rebuttal Briefs

As indicated in a previous notice of July 20 (FR DOC 88–16303), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the United States International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the 1988 Annual Review of the Generalized System of Preferences. The report is available from the USITC by calling Dennis Rudy at the Office of Industries at (202) 252–1461 (Room #501c). The USITC is located at 500 E Street NW., in Washington, DC. The report is also available for review by appointment at the GSP Information Center, Office of the USTR in Washington, DC; the GSP Information Center can be contacted at (202) 395–6971.

All comments concerning the ITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street NW., Room 517, Washington, DC 20506. Comments must be received no later than 5:00 p.m. on Monday, January 23, 1989. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, 20 copies of a nonconfidential version of the submission along with 12 copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly maked at the top and bottom of each and every page (either "public version" or "non-confidential").

Questions concerning the comment period or any other aspect of the GSP program may be directed to the GSP Information Center at (202) 395–6971.

Notice is hereby given of a change in deadlines for the submission of post-hearing and rebuttal briefs regarding the Timex petition to add watches to the list of GSP eligible products. The new dates will be as follows:

Post-hearing briefs—5:00 p.m., Tuesday, March 28, 1989
Rebuttal Briefs—5:00 p.m., Tuesday, April 11, 1989.

Briefs or statements will be accepted if submitted in 20 copies, in English, no lated than 5:00 p.m. on the designated days.

Federal Register notices regarding these submissions have been published on two occasions. The document numbers and the dates of these notices are as follows: FR Doc. 88–23939 (Oct. 18) and FR Doc. 88–23176 (Oct. 7).

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89–316 Filed 1–6–89; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26413; File Nos. SR–Amex–88–35; SR–CBOE–88–26; SR–Phlx–88–43; SR–PSE–88–29]

Self-Regulatory Organizations; American Stock Exchange, Inc, et al.; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Changes Relating to the Extension of the Near-Term Options Expiration Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act") [1] and Rule 19b-4 [2] thereunder, notice is hereby given that on December 27, 1988, December 21, 1988, and December 19, 1988, respectively, the American ("Amex"), Philadelphia ("Phlx"), and Pacific ("PSE") Stock Exchanges, and the Chicago Board Options Exchange ("CBOE") (collectively, the "Exchanges"), submitted to the Securities and Exchange Commission ("SEC" or "Commission") proposed ruled changes extending the Exchanges' pilot programs providing for four expiration months for stock options, including two near-term months, until April 30, 1989. The Exchanges also request permanent approval of the pilot programs prior to their expiration in April. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

In 1985 the options exchanges implemented stock option pilot programs for certain January cycle stock options. Under the terms of the pilots, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times. Since that time, the pilot programs have been extended and expanded to all equity options on all three expiration cycles.

The purpose of the pilot programs is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the programs since their inception and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchanges have found the pilots have improved investors' interest in trading such options.

At the request of Commission staff, the Exchanges propose to continue the pilot programs until April 30, 1989, and have requested accelerated effectiveness pursuant to section 19(b)(2) of the Act so that the pilot programs can continue without interruption.[3] The extension will give the Exchanges additional time to compile data which the Commission has requested in connection with the Exchanges' monitoring of the program. In addition, the extension will give the Commission the time to analyze this data before acting on the Exchanges' requests for permanent approval.

The Exchanges believe the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchanges because they continue a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to securities exchanges, and in particular, the requirements of section 6 and the rules and regulations thereunder. The Commission believes that the proposed rule changes will benefit public customers by continuing pilot programs designed to meet investors' preferences for stock options with near-term expiration cycles.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof so that the pilot programs can continue without interruption. In addition, the Commission previously solicited comment on these near-term expiration pilot programs and has not received any negative comments on their operation. Moreover, the current pilot programs have operated effectively and generally have been well received. Finally, the Commission's approval is limited until April 30, 1989, or until the Commission acts on the Exchanges' request for permanent approval of the pilot programs.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 30, 1989.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule changes are partially approved until April 30, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: December 30, 1988

Jonathan G. Katz,

Secretary.

[FR Doc. 89-388 Filed 1-6-89; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The New York Stock Exchange ("NYSE") previously requested and received Commission approval of an extension to the NYSE near-term options expiration pilot program. Securities Exchange Act Release No. 26369 (December 16, 1988), 53 FR 51941 (December 23, 1988).

[4] 15 U.S.C. 78s(b) (1982).

[5] 17 CFR 200.30-3(a)(12) (1986)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of National Executive Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89-1-2, order to show cause.

SUMMARY: The Department of Transportation is proposing to find National Executive Airlines, Inc., fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 19, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, Room 6420), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: January 3, 1989.

Gregory S. Dole,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-344 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46034]

Office of Hearings; U.S.-Australia Service Proceeding; Assignment of Proceeding

Served January 4, 1989.

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-345 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

[Docket 46034]

Office of Hearings; U.S.-Australia Service Proceeding; Prehearing Conference

Served January 4, 1989.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 19, 1989, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated at Washington, DC, January 4, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 89-346 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Availability of the Priority System for Selecting Projects for Grants to Preserve and Enhance Capacity at Airports

AGENCY: Federal aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces the availability of the Airport Improvement Program priority system for selecting projects for grants to preserve and enhance airport capacity. Section 507(c) of the Airport and Airway Improvement Act of 1982 (AAIA), as amended, authorizes the Secretary to make grants from discretionary funds for the purpose of preserving and enhancing airport capacity. In selecting projects for these grants, consideration is to be given to their effect on overall national air transportation system capacity, project benefit and cost, and the financial commitment of the airport operator or other non-Federal funding sources to preserve or enhance airport capacity. Because the demand for these discretionary funds exceeds the amount available, the Federal Aviation Administration (FAA) is unable to fund all of those capacity projects for which airport sponsors wish to obtain grants. The FAA has developed a priority system to help make decisions on the relative priority of such capacity projects proposed during the fiscal year. Under this system, projects are favored which best preserve and enhance capacity in the national system of airports.

The FAA is making this document available for review by the aviation public. Interested parties may call, write, or visit the following office to obtain the document: Office of Airport Planning and Programming, Grants-in-Aid Division, APP-500 (Room 620), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-8825 contact: Richard L. Angle.

Issued in Washington, DC on December 5, 1988

Paul L. Galis,

Director, Office of Planning and Programming, APP-1.

[FR Doc. 89-326 Filed 1-6-89; 8:45 am]

BILLING CODE 4910-13-M

[File No. AC 21.17-2]

Advisory Circular; Type Certification—Fixed-Wing Gliders (Sailplanes), Including Self-Launching (Powered) Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed advisory circular; request for comments.

SUMMARY: Proposed Advisory Circular (AC) 21.17-2 will replace AC 21.23-1 titled Type Certification—Fixed-Wing Gliders (Sailplanes), AC 21.23-1, dated January 12, 1981, will be cancelled. AC 21.17-2 described three acceptable criteria, but not the only criteria, for the type certification of fixed-wing gliders (sailplanes) including self-launching (powered) gliders, that may be used by an applicant in showing compliance with new § 21.17(b) of the Federal Aviation Regulations (FAR 21).

DATE: Comments must be received on or before February 8, 1989.

ADDRESS: Comments on proposed AC 21.17-2 may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR-110, 800 Independence Avenue SW., Room 225, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110, Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the AC number and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before issuing Advisory Circular 21.17-2.

Background

Federal Aviation Regulations (FAR) Part 21 was amended effective April 13, 1987, to provide procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of subchapter C of the FAR. Airworthiness standards for these special classes of aircraft are designated in new FAR 21.17(b). Proposed AC 21.17-2 contains a comprehensive list of acceptable criteria, but not the only means, for the type certification of gliders. This AC also provides procedures for other persons to develop and obtain FAA approval for their own design criteria. In addition, procedures and additional criteria necessary to obtain a U.S. type certification are provided.

Section 21.23 of FAR Part 21 was removed and the glider requirements incorporated into § 21.17(b). Therefore, the essence of AC 21.23-1 is included in proposed AC 21.17-2

Related FAR

Section 21.5—Airplane or Rotorcraft Flight Manual.

Section 21.17—Designation of applicable regulations.

Part 23—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.

Part 33—Airworthiness Standards: Aircraft Engines.

Part 35—Airworthiness Standards: Propellers.

Part 45, Subpart C—Nationality and Registration Marks.

Section 91.31—Civil aircraft flight manual, marking and placard requirements.

Section 91.33—Powered civil aircraft with standard category U.S. airworthiness ceritificates; instrument and equipment requirements.

How To Obtain Copies

A copy of proposed AC 21.17–2, Type Certification—Fixed Wing Gliders (Sailplanes) Including Self-Launching (Powered) Gliders, may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division Aircraft Certification Service.

[FR Doc. 89–324 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

Proposed Special Purpose Operation; Target Towing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special purpose operation—target towing; request for comments.

SUMMARY: Tracor Flight Systems, Inc. (TFSI) of Mojave, California, has applied to the FAA for a restricted category type certificate under Federal Aviation Regulations (FAR) 21.25(a)(2) for the USAF F–100–F fighter built by North American Aviation. The F–100–F would be modified for towing targets in restricted operations areas. The proposed special purpose operation would be "Target Towing" under FAR § 21.25(b)(7). Since target towing is not an approved special purpose operation, the FAA is requesting public comments before making its final determination that the new special purpose operation is in the public interest and safety would not be compromised.

DATE: Comments on this notice must be received on or before February 8, 1989.

ADDRESS: Comments may be mailed or delivered to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Policy and Procedures Branch, AIR–110, 800 Independence Avenue SW., Room 335, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR–110. Telephone (202) 267–9583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the address specified above. All communication received on or before the closing date specified above will be considered by the Administrator before approving the new special purpose operation.

Background

On August 17, 1988, Tracor Flight Systems, Inc. (TFSI) applied to the FAA for a restricted category type certificate for the United States Air Force (USAF) F–100–F built by North American Aviation. The special purpose operation will be towing targets for the military services. The type certification basis for this project is Federal Aviation Regulations (FAR) §§ 21.25(a), 21.25(a)(2) and 21.25(b)(7). The special purpose operation is to be established under the provisions of § 21.25(b)(7).

The USAF F–100–F two-seat trainer is eligible for a restricted category type certificate under FAR § 21.25(a)(2) because it is a type of airplane that has been manufactured in accordance with the requirements of, and accepted for use by, an Armed Force of the United States and has been later modified for a special purpose. TFSI has modified the F–100–F by installing a target towing system to be used during the special purpose operations.

TFSI has three F–100–F airplanes to be modified for towing targets. The target towing operation would be conducted in Military Operations Area gunnery ranges where public safety would not be compromised. The target and towing system is to be stowed during takeoff and en route to the restricted area. When in the proper area, the target would be deployed by unreeling the cable to which it is attached. After the gunnery practice is completed, the target would be jettisoned by cutting the towing cable while still in restricted airspace; therefore, there would be no hazard to the public.

Tracor contends that the special purpose operation of towing targets is clearly in the best interest of the U.S. public for these reasons:

1. Tracor Flight Systems, Inc. is a major employer in the Antelope Valley. This project would significantly enhance the industrial activity in the Mojave area, thus contributing to the economic health of the Antelope Valley.

2. The target towing operation furnishes an essential ingredient of the combat readiness of our military air arm and the counterparts within the armed forces of our NATO allies. Without such operations, national security would surely suffer.

3. The awarding of a contract of a U.S. firm, in this case TFSI, has a positive effect on the international balance of payments.

Related FAR

Section 21.25, Issue of type certificate; Restricted category aircraft.

Section 21.27, Issue of type certificate, surplus aircraft of the Armed Forces.

Availability of Additional Copies of Notice

Any person may obtain a copy of this notice by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–323 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

Crewmember Protective Breathing Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C116 prescribes the minimum performance standards that Crewmember Protective Breathing Equipment must meet to be identified with the marking "TSO–C116."

DATE: Comments must identify the TSO file number and be received on or before March 30, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C116, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

How to Obtain Copies

A copy of the proposed TSO–C116 may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC on December 22, 1988.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–325 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in cooperation with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council, will conduct a public meeting to report the results of the 15th session of the United Nation's Committee of Experts on the Transport of Dangerous Goods.

DATE: Janaury 27, 1989, 9:30 a.m.

ADDRESS: Room 3200, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Richard C. Barlow, Acting International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: Topics to be covered at the meeting include: (1) Review of the decisions taken by the Committee of Experts on the Transport of Dangerous Goods at its 15th Session; (2) discussion of items of interest on the Committee's work plan for the next biennium; and (3) open discussion on general topics of interest for the next meeting of the International Civil Aviation Organization's Dangerous Goods Panel.

Issued in Washington, DC on January 4, 1989.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89–384 Filed 1–6–89; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 4, 1989.

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.

U.S. Mint

OMB Number: New.
Form Number: MF 1006.
Type of Review: New Collection.
Title: Quantitative Research/Buyers of 1989 American Eagle Proof Coins.
Description: This information collection will provide the U.S. Mint with valuable data on customer needs and behavior, and will aid in the evaluation of proposed marketing strategies and creative executions, as well as the assessment of general advertising effectiveness. The U.S. Mint requires this collection as part of a direct marketing program for 1989 American Eagle Proof Coins.
Respondents: Individuals or households.
Estimated Number of Respondents: 90.
Extimated Burden Hours Per Response: 2 hours.
Frequency of Response: One time only.
Estimated Total Reporting Burden: 180 hours.
Clearance Officer: Robert Parker, (202) 376–0557, United States Mint, Room 639, 633 3rd Street NW., Washington, DC 20220.
OMB Reviewer: Milo Suderhauf, (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. 89–380 Filed 1–6–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 4, 1989.

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: 1545–0195.
Form Number: 5213.
Type of Review: Extension.
Title: Election to Postpone Determination as to Whether the Presumption That an Activity is Engaged in for Profit Applies.
Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 10,730.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 7 minutes
Learning about the law or the form, 5 minutes
Preparing the form, 10 minutes
Copying, assembling, and sending the

form to IRS, 20 minutes
Estimated Total Recordkeeping/ Reporting Burden: 7,511 hours.
OMB Number: 1545–0534.
Form Number: 5303.
Type of Review: Revision.
Title: Application for Determination for Collectively-Bargained Plan.
Description: The IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.
Respondents: State or local governments, Businesses or other for-profit.
Estimated Number of Respondents: 2,500.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping, 23 hours 41 minutes
Learning about the law or the form, 2 hours 22 minutes
Preparing the form, 6 hours 35 minutes
Copying, assembling, and sending the form to IRS, 1 hour 4 minutes
Estimated Total Recordkeeping/ Reporting Burden: 84,250 hours.
OMB Number: 1545–0732.
Form Number: None.
Type of Review: Extension.
Title: Credit for Increasing Research Activity.
Description: This information is necessary to comply with requirements of Code section 41 (section 44F before change by the Tax Reform Act of 1984 and section 30 before change by the Tax Reform Act of 1986) which describes the situations in which a taxpayer is entitled to an income tax credit for increases in research activity.
Respondents: Individuals, or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Response: 1.
Estimated Total Reporting Burden: 1 hour.
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. 89–381 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

Advisory Committee for the Preservation of the Treasury Building; Renewal

The Department of the Treasury, pursuant to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92–463, as amended, and with approval of the Secretary of the Treasury, announces the renewal of the Charter of the Advisory Committee for the Preservation of the Treasury Building.

The primary purpose of the committee is to consult with and advise the Secretary of the Treasury and his staff upon request regarding various rehabilitation projects in the Main Treasury Building. The committee will also undertake active solicitation to raise funds as well as to encourage donors to contribute works of art and furnishings of historic importance to the Department of the Treasury.

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Department of the Treasury has renewed the Charter of Advisory Committee for the Preservation of the Treasury Building for a period of two years beginning January 3, 1989.

Dated: January 3, 1989.

Jill E. Kent,
Assistant Secretary of the Treasury (Management).
[FR Doc. 89–382 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92–463, that a meeting will be held at the U.S. Treasury Department in Washington, DC, on January 31 and February 1, 1989 of the following debt management advisory committee.

Public Securities Association, U.S. Government and Federal Agencies Securities Committee.

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on January 31 and the preparation of a written report to the Secretary of the Treasury on February 1, 1989.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c) (4) and (9) (A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Date: January 4, 1989.

David W. Mullins, Jr.,
Acting Assistant Secretary (Domestic Finance).
[FR Doc. 89–289 Filed 1–6–89; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held in Fort Bragg, Camp Le Jeune, North Carolina, Santo Domingo, Dominican Republic, and Tegucigalpa, Honduras on January 12–15.

The Commission will consult with U.S. Mission and U.S. military personnel on public diplomacy policies and programs and U.S. psychological operations activities.

Please call Gloria Kalamets, (202) 485–2468 for further information.

Dated: January 3, 1989.

Ledra L. Dildy,

Staff Assistant, Federal Register Liaison.

[FR Doc. 89–383 Filed 1–6–89; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document list the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required to asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW. Washington, DC 20503, (202) 395–7316.

DATES:. Comments on the information collection should be directed to the OMB Desk Officer on or before February 8, 1989.

Dated: December 29, 1988.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.
2. Application for Benefits under the Provisions of section 156, Pub. L. 97–377.
3. VA Form 21–8924.
4. This form is used by the VA to identify claimants and to determine their eligibility for benefits.
5. On occasion.
6. Individuals or households.
7. 9,000 responses.
8. 3,000 hours.
9. Not applicable.

1. Department of Veterans Benefits.
2. Application for Cash Surrender of Policy Loan.
3. VA Form 29–1546.
4. This form is used by the insured to establish eligibility to obtain a loan or cash surrender an existing policy.
5. On occasion.
6. Individuals or households.
7. 29,636 responses.
8. 4,939 hours.
9. Not applicable.

[FR Doc. 89–287 Filed 1–6–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

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).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

January 4, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94-409, 5 U.S.C. 552B):

TIME AND PLACE: 10 a.m., January 11, 1989.

PLACE: 825 North Capitol Street NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda

889th Meeting—January 11, 1989, Regular Meeting (10 a.m.)

CAP-1.
Docket No. UL87-30-002, Kirkway Electric Corporation
CAP-2.
Docket No. UL88-24-002, City of Martinsville, Virginia
CAP-3.
Project No. 8714-001, Pennichuck Water Works, Inc.
CAP-4.
Project No. 8121-003, Warren B. Nelson
CAP-5.
Project Nos. 2911-011 and 3015-005, Alaska Power Authority
CAP-6.
Project No. 10655-001, Manter Corporation
CAP-7.
Docket No. EL88-29-001, Larry M. Taylor
CAP-8.
Project No. 5308-005, City of Beaverton, Michigan
CAP-9.
Project No. 943-002 and Docket No. E-9569-000, Public Utility District No. 1 of Chelan County, Washington
CAP-10.
Docket No. EL80-38-003 and Project No. 405-009, Philadelphia Electric Power Company and Susquehenna Power Company
CAP-11.
Project No. 67-017, Southern California Edison Company
CAP-12.
Project No. 2484-001, Village of Gresham, Wisconsin
CAP-13.
Docket Nos. ER87-72-003, ER87-73-002, ER89-73-000 and ER89-74-000, Orange and Rockland Utilities, Inc.
CAP-14.
Docket No. ER89-49-000, Pacific Gas and Electric Company
CAP-15.
Docket No. ER88-432-000, Tucson Electric Power Company
CAP-16.
Docket No. ER89-66-000, Canal Electric Company
CAP-17.
Docket No. ER84-560-007, Union Electric Company
CAP—18.
Docket No. ER88-619-001, Gulf States Utilities Company
CAP—19.
Docket No. ER82-774-010, Nantahala Power & Light Company and Tapoco, Inc.
CAP—20.
Docket Nos. ER88-304-002, 003, ER88-305-001 and 002, Niagara Mohawk Power Corporation
CAP—21.
Docket No. EL83-24-006, Seminole Electric Cooperative, Inc.
Docket No. ER84-379-006, Florida Power and Light Company
CAP—22.
ER81-177-008, Southern California Edison Company
CAP—23.
Omitted
CAP—24.
Docket No. EL89-2-000, City of Piqua, Ohio v. Dayton Power and Light Company
CAP—25.
Docket No. QF88-507-000, U.S. Army Corps of Engineers

Consent Miscellaneous Agenda

CAM—1.
Docket No. FA87-3-000, Central Vermont Public Service Corporation

Consent Gas Agenda

CAG—1.
Docket No. RP88-203-003, Panhandle Eastern Pipe Line Company
CAG—2.
Docket Nos. RP89-4-002, 001 and RP88-228-006, Tennessee Pipe Line Company
CAG—3.
Docket Nos. RP81-85-003, RP83-93-019 and FA85-01-002, Trunkline LNG Company and Gas Company
CAG—4.
Docket Nos. RP89-09-001 and RP88-241-003, Panhandle Eastern Pipe Line Company
CAG—5.
Docket Nos. RP89-10-001 and RP88-240-003, Panhandle Eastern Pipe Line Company
CAG—6.
Docket No. RP88-228-005, Tennessee Gas Pipeline Company
CAG—7.
Docket Nos. RP85-122-013 and RP87-30-019, Colorado Interstate Gas Company
CAG—8.
Docket No. RP86-35-013, Great Lakes Gas Transmission Company
CAG—9.
Docket Nos. RP88-217-007 and TA88-1-22-005, CNG Transmission Corporation
CAG—10.
Docket No. RP84-34-002, Midwestern Gas Transmission Company
CAG—11.
Docket Nos. RP88-27-009 and RP88-264-001, United Gas Pipeline Company
Docket No. CP87-524-002, Texas Gas Transmission Corporation
CAG—12.
Docket Nos. RP88-263-002 and RP88-92-006, United Gas Pipe Line Company
CAG—13.
Docket No. RP85-148-008, Transcontinental Gas Pipe Line Corporation
Docket No. RP85-170-005, Texas Eastern Transmission Corporation
Docket No. RP85-181-003, Texas Gas Transmission Corporation
Docket No. RP85-202-003, Trunkline Gas Company
Docket No. RP85-203-004, Panhandle Eastern Pipe Line Company
CAG—14.
Docket Nos. RP88-257-002, RP88-181-005 and RP86-94-012, Sea Robin Pipeline Company
CAG—15.
Docket No. RP88-106-002, Northern Natural Gas Company, Division of Enron Corp.
CAG—16.
Docket Nos. RP89-1-004, Northwest Pipeline Corporation
CAG—17.
Docket Nos. RP86-63-012, RP86-114-007 and RP88-17-019, Southern Natural Gas Company
CAG—18.
Docket No. RP88-45-010, Arkla Energy Resources, a division of Arkla, Inc.
CAG—19.
Docket No. RP86-45-020, El Paso Natural Gas Company
CAG—20.
Docket No. RP88-205-000, Alabama-Tennessee Natural Gas Company
CAG—21.
Docket Nos. RP88-68-008 and RP87-7-044, Transcontinental Gas Pipe Line Corporation
CAG—22.
Docket No. TQ89-1-46-002, Kentucky West Virginia Gas Company

CAG–23.
Docket No. TA89–1–41–003, Paiute Pipeline Company
CAG–24.
Docket Nos. RP88–217–002, TA88–1–22–002 and TA88–1–22–003, CNG Transmission Corporation
CAG–25.
Docket No. RP88–47–014, Northwest Pipeline Corporation
CAG–26.
Docket No. RP89–32–000, Florida Gas Transmission Company
CAG–27.
Docket Nos. TM89–1–1–000 and RP88–205–001, Alabama Tennessee Natural Gas Company
CAG–28.
Docket No. RP89–45–000, ANR Pipeline Company
CAG–29.
Docket Nos. TA89–1–35–000 and 001, West Texas Gas Inc.
CAG–30.
Docket No. RP88–242–001, Granite State Gas Transmission, Inc.
CAG–31.
Docket Nos. RP80–80–008, RP88–192–001 and RP88–223–003, Texas Eastern Transmission Corporation
CAG–32.
Docket Nos. TQ89–1–29–000 and TA89–1–29–000, Transcontinental Gas Pipe Line Corporation
CAG–33.
Docket Nos. RP88–80–011 and RP88–251–002, Texas Eastern Transmission Corporation
CAG–34.
Docket Nos. RP85–177–056, CP88–136–001 and RP88–67–011, Texas Eastern Transmission Corporation
CAG–35.
Docket Nos. ST88–5348–000 and ST83–297–000, Tejas Gas Corporation
CAG–36.
Docket Nos. RP88–45–009 and RP88–46–002, Arkla Energy Resources, a division of Arkla, Inc.
CAG–37.
Docket Nos. ST88–2553–000 and ST88–3191–000, Wintershall Pipeline Corporation
CAG–38.
Docket No. ST88–1898–000, Wintershall Pipeline Corporation
CAG–39.
Docket Nos. ST88–3342–000 and ST88–4552–000, Wintershall Pipeline Corporation
CAG–40.
Docket No. CI88–639–001, Amoco Production Company
CAG–41.
Docket No. CI88–473–000, Southland Royalty Company
CAG–42.
Docket No. CI89–104–000, Mobil Oil Exploration & Producing Southeast, Inc.
CAG–43.
Docket No. CI85–513–009, Tenngasco Gas Supply Company, *et al.* v. Southland Royalty Company, *et al.*
Docket No. CI88–605–000, People of the State of California and the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, Southern California Gas Company and Southwest Gas Corporation v. El Paso Natural Gas Company and Odessa Natural Gasoline Company
CAG–44.
Docket Nos. CP88–490–001 and CP88–548–001, Panhandle Eastern Pipe Line Company
CAG–45.
Docket No. CP88–332–001, El Paso Natural Gas Company
CAG–46.
Docket No. CP88–700–001, Windard Energy and Marketing Company and ARCO Oil and Gas Company
CAG–47.
Docket No. CP87–451–019, Northeast U.S. Pipeline Projects
Docket Nos. CP88–180–001, CP88–181–002 and CP88–185–001, Penn East CDS
CAG–48.
Docket Nos. CP87–479–008, 009, CP87–480–005 and 006, Wyoming-California Pipeline Company
CAG–49.
Docket No. CP87–524–003, Texas Gas Transmission Corporation
CAG–50.
Docket Nos. CP86–725–001 and 002, United Gas Pipe Line Company and Trunkline Gas Company
CAG–51.
Docket Nos. CP88–307–001 and 002, Great Lakes Gas Transmission Company
CAG–52.
Docket Nos. CP86–636–004, CP86–735–002, CP87–10–002, CP87–66–002, CP87–84–002, CP87–21–003, CP87–19–001 and CP88–276–001, Pacific Gas Transmission Company
CAG–53.
Docket No. CP84–348–006, Mississippi River Transmission Corporation
CAG–54.
Docket No. CP87–451–017, Northeast U.S. Pipeline Projects
Docket No. CP88–194–000, National Fuel Gas Supply Corporation
Docket No. CP89–7–000 (Superseding Docket No. CP88–177–000), Transcontinental Gas Pipe Line Corporation
Docket No. CP88–171–000, Tennessee Gas Pipeline Company
Docket No. CP88–195–000, PennEast Gas Services Company, CNG Transmission Corporation and Texas Eastern Transmission Corporation
Docket Nos. CP88–186–000, CP88–187–000 and CP88–188–000, Algonquin Gas Transmission Company
Docket No. CP88–183–000, PennEast Gas Services Company and CNG Transmission Corporation
CAG–55.
Docket No. CP89–3–000, Panhandle Eastern Pipe Line Company
CAG–56.
Docket No. CP88–416–000, Southern Natural Gas Company
CAG–57.
Docket Nos. CP87–205–000 and 001, Texas Gas Transmission Corporation
CAG–58.
Docket No. CP88–588–000, ANR Pipeline Company
CAG–59.
Docket No. CP88–28–000, Nora Transmission Company
CAG–60.
Docket Nos. CP87–57–004 CP87–166–004, CP87–386–005, CP87–560–000, CP88–242–000, 002 and CP88–245–000 (Not Consolidated), Florida Gas Transmission Company
CAG–61.
Docket No. CP84–31–004, Texas Gas Transmission Corporation and CSX NGL Corporation
CAG–62.
Docket No. CP87–130–001, Tennessee Gas Pipeline Company
CAG–63.
Docket No. CP88–699–000, Northern Natural Gas Company, Division of Enron Corp.
CAG–64.
Docket No. TA89–1–45–001, Inter-City Minnesota Pipelines, Ltd., Inc.
CAG–65.
Docket Nos. TF89–2–51–000 and TQ89–2–51–001, Great Lakes Gas Transmission Company

I. Licensed Project Matters

P–1.
Commission's Procedures Under Section 10(j) of the Federal Power Act

II. Electric Rate Matters

ER–1.
Docket Nos. ER85–785–001, ER86–387–001 and ER86–526–001, Wisconsin Electric Power Company. Opinion and Order on initial decision concerning service to Wisconsin Public Power, Inc. System

Miscellaneous Agenda

M–1.
Reserved
M–2.
Reserved

I. Pipeline Rate Matters

RP–1.
Reserved

II. Producer Matters

CI–1.
Reserved

III. Pipeline Certificate Matters

CP–1.
Docket Nos. CP88–6–001 and RP88–8–007, United Gas Pipe Line Company. Order ruling on experimental capacity brokering proposal.
CP–2.
Docket No. CP87–451–016, Northeast U.S. Pipeline Projects. Order ruling on discreteness of additional northeast projects.
CP–3.
Docket Nos. CP85–437–000 and 003, Mojave Pipeline Company
Docket Nos. CP85–552–000 and 002, Kern River Gas Transmission Company
Docket Nos. CP85–625–000 and 001, Northwest Pipeline Corporation

Docket Nos. CP86–197–000, 001, 002, and 003, El Paso Natural Gas Company
Docket Nos. CP86–212–000 and 001, Transwestern Pipeline Company
Docket Nos. CP87–479–001 and CP87–480–000, Wyoming-California Pipeline Company. Order on review of initial decision and determination of adequacy of supplement to Final Environmental Impact Statement.

Lois D. Cashell,

Secretary.

[FR Doc. 89–439 Filed 1–5–89; 3:26 pm]

BILLING CODE 6717–01–M

FEDERAL TRADE COMMISSION

TIME AND PLACE: 10:00 a.m., Wednesday, January 4, 1989.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Further Consideration of Budget Situation.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 89–418 Filed 1–5–89; 12:21 pm]

BILLING CODE 6750–01–M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, January 12, and 13, 1989.

TIME: 9:15 a.m. to 5:00 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW. ground floor (conference room).

STATUS: Open session—9:15 a.m. to 12:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the Twenty-seventh meeting. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457–1700.

Dated: January 5, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89–397 Filed 1–5–89; 10:35 am]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59858; FRL-3488-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-28328 beginning on page 49787 in the issue of Friday, December 9, 1988, make the following correction:

On page 49788, in the second column, under "**Y 89-31**", in the third line, *Use/Import*" should read "*Use/Production*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-13; A-23217]

Exchange of Public and Private Mineral Estates in La Paz, Mohave, and Yavapai Counties, AZ

Correction

In notice document 88-29420 beginning on page 51591 in the issue of Thursday, December 22, 1988, make the following corrections:

1. On page 51592, in the second column, in the second line, "NE¼W¼" should read "NE¼SW¼".

2. On page 51593, in the third column, under T. 14 N., R. 12 W., in the second line, "N½W¼" should read "N½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Moratorium on Importation of Raw and Worked Ivory From CITES Nonparty Producing and Intermediary Countries

Correction

In notice document 88-29529 beginning on page 52242 in the issue of Tuesday, December 27, 1988, make the following correction:

On page 52243, in the first column, in the first column of the table, the fourth entry from the bottom should read "*Gabon".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Correction

In notice document 88-25642 beginning on page 44957 in the issue of Monday, November 7, 1988, make the following correction:

On page 44958, in the first column, immediately below the first indented block of text, insert:

Extension

Bureau of Labor Statistics

U.S. Import Product Information

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 3

Diseases Subject to Presumptive Service Connection, and Payment of the Special Allowance

Correction

In proposed rule document 88-28928 beginning on page 50547 in the issue of Friday, December 16, 1988, make the following correction:

§ 3.309 [Corrected]

On page 50550, in the first column, in § 3.309(d)(4)(v)(I), in the second and third lines, "June 20, 1952" should read "June 20, 1953".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

Per Diem Rates for Eligible Veterans in State Homes

Correction

In notice document 88-28908 appearing on page 50620 in the issue of Friday, December 16, 1988, make the following correction:

In the 3rd column, in the 11th line, "$8.80" should read "$8.70".

BILLING CODE 1505-01-D

Federal Register

Monday
January 9, 1989

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

Supportive Housing Demonstration Program; Notice of Changes to Final Rule and Notice of Funds Availability and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. N-89-1903; FR 2581]

Supportive Housing Demonstration Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of changes to final rule and notice of funds availability.

SUMMARY: Title IV, Subtitle C, of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987) (McKinney Act) authorizes the Supportive Housing Demonstration program. The program makes assistance available for projects providing housing and supportive services for homeless persons in the forms of transitional housing to facilitate the movement of the homeless to independent living and permanent housing to assist handicapped homeless persons to live more independent lives. On June 24, 1988, HUD published the final rule governing the Supportive Housing Demonstration program (53 FR 23898). The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) (1988 Amendments Act) made several amendments to the program. This Notice announces the changes to the program as a result of the 1988 Amendments Act and solicits public comments on the changes. The June 24, 1988 final rule, as amended by this Notice, will govern the program until a revised final rule is published. This Notice also announces the availability of $89.6 million in funds for transitional housing assistance and $15 million in funds for permanent housing assistance.

DATE: *Effective Date:* January 9, 1989.

Comments Due: March 27, 1989. Applications due by March 30, 1989 (transitional housing) and April 27, 1989 (permanent housing).

ADDRESS: Interested persons are invited to submit comments regarding the changes to the regulations announced in this Notice to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address. Copies of the final rule described in the Summary are available at the above address upon request.

FOR FURTHER INFORMATION CONTACT: Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-9075. Hearing or speech-impaired individuals may call HUD's TDD number (202) 755-6490. (These phone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the Supportive Housing Demonstration Program were submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and were approved on July 1, 1988 and assigned OMB control number 2502-0361. As a result of changes to the program made by the 1988 Amendments Act, revised information collection requirements, which are described in this Notice, were submitted to OMB for review and approved on December 30, 1988 under the same control number. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the heading *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The McKinney Act authorized the Supportive Housing Demonstration program. The program is designed to develop innovative approaches to providing housing and supportive services to the homeless. It consists of two components: (1) Transitional housing to facilitate the movement of homeless persons to independent living (transitional housing) and (2) permanent housing to assist handicapped homeless persons to live more independent lives (permanent housing).

HUD published a final rule governing the two components on June 24, 1988 (53 FR 23898) (24 CFR Part 840 (transitional housing) and Part 841 (permanent housing)). The 1988 Amendments Act made several changes in both programs, and directed HUD (1) to publish a Notice within 60 days of enactment to establish the requirements necessary to implement those changes for immediate effect, and (2) to adopt a final rule within 12 months of enactment.

Parts III and IV of this Notice describe the changes in the two programs as a result of the 1988 Amendments Act. These changes will be effective immediately for the funding round announced in this Notice. The June 24, 1988 final rule, as modified by this Notice, constitutes the requirements for the programs until a final rule governing them takes effect. HUD invites the public to comment on the changes contained in this Notice to form a basis for amending the final rule.

This Notice also announces the availability of $89.6 million in funds for transitional housing and $15 million in funds for permanent housing, and solicits the submission of applications for the programs. Application deadline dates are March 30, 1989 for transitional housing, and April 27, 1989 for permanent housing. Applicants for projects to be located in Federally-designated enterprise zones are encouraged to apply. (See 53 FR 30944 (Aug. 16, 1988) and 53 FR 48638 (Dec. 2, 1988). Sections V and VI of this Notice contain information on the submission of applications.

II. Comprehensive Homeless Assistance Plan

Under both the transitional housing program and the permanent housing program, assistance may not be provided to or within the jurisdiction of a State or an ESG formula city or county (defined in 24 CFR 840.5 and 841.5), unless the jurisdiction (or jurisdictions, where necessary) has a HUD-approved Comprehensive Homeless Assistance Plan (CHAP). In addition, supportive housing applications must contain a certification from the appropriate CHAP jurisdiction that the proposed project is consistent with the CHAP. (See §§ 840.150, 840.210(b)(4)(v)(B), 841.150, and 841.210(b)(4)(v)(B).)

On December 28, 1988, HUD published a **Federal Register** Notice announcing the current requirements for HUD approval of a CHAP as a result of the 1988 Amendments Act (53 FR 52600). Applicants are encouraged to familiarize

themselves with the CHAP requirements.

III. Changes in the Transitional Housing Program

The 1988 Amendments Act made the following changes in the transitional housing program (24 CFR Part 840):

1. *Definition of Project.* Section 441(a) of the 1988 Amendments Act redefines the term "project" to include those structures or portions of structures used for transitional housing that receive operating costs assistance or technical assistance only. This amendment does not require a change in the final rule. The definition of "project" in § 840.5 is not limited to transitional housing programs that receive operating costs assistance or technical assistance in connection with acquisition or rehabilitation assistance.

In addition, under § 840.100(b), applicants may receive operating costs assistance independent of acquisition or rehabilitation assistance. Technical assistance is only available in connection with another form of transitional housing assistance, but it is not tied to acquisition or rehabilitation activities, since it may be used with operating costs assistance alone.

Thus, operating costs will continue to be eligible for funding in their own right. As provided in the final rule, technical assistance will be available, but only in connection with another form of transitional housing assistance.

2. *Availability of Operating Costs Assistance and Technical Assistance for New Structures.* Sections 441 (b) and (c) provide that operating costs assistance and certain types of technical assistance may be made available for transitional housing, without regard to whether the housing is an existing structure. This change will allow a project with a structure not yet completed to receive operating costs assistance and technical assistance without also receiving acquisition or rehabilitation assistance. However, no assistance may be provided for the construction of structures, with the limited exception discussed in III.3.

In addition to compliance with the criteria set out in § 840.115 on funding for annual operating costs, an applicant for operating costs assistance for a transitional housing project involving a structure not yet completed must provide reasonable assurance that construction will be completed within nine months following notification of an award of a grant for operating costs. ("Notification" of an award means the date of the letter from HUD to the applicant notifying the applicant that its application for assistance has been approved.) Reasonable assurance may be satisfied by submission of the following:

(a) Plans and specifications for the purposed structure;

(b) Evidence that construction financing has been obtained; and

(c) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

HUD may deobligate an award for operating costs and technical assistance if the construction has not been completed within nine months following notification of the award.

For transitional housing projects in structures not yet completed, technical assistance will be offered only in connection with an award of operating costs assistance. Under section 441(c), technical assistance for a structure not yet completed may be available in *operating* transitional housing and *providing supportive services* to the residents of transitional housing. Technical assistance in *establishing* transitional housing is available only in connection with existing structures. A description of technical assistance offered to recipients is contained in § 840.120. Since technical assistance does not involve a grant of funds, HUD will continue to provide technical assistance only through HUD offices. As a conforming change, the language in § 840.5 limiting a transitional housing "project" to "existing" structures will be deleted.

3. *Availability of Grant for Limited New Construction.* Section 449(b) authorizes an advance for new construction in limited circumstances. Under § 840.125(d), assistance for transitional housing may not be used for new construction of housing. Section 449(b) will allow an advance for new construction only if the Secretary finds that the project:

(a) Involves the cooperation of a city and a State university;

(b) Has the land donated by a State university;

(c) Proposes a supportive housing structure of at least 10,000 square feet; and

(d) Proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

Where the proposed site for a new construction advance is located in a wetland, the procedures required by Executive Order 11990, Protection of Wetlands, must be undertaken before any decision is made on the environmental acceptability of the project site for assistance. These procedures are identical to the procedures under Executive Order 11988, Floodplain Management (see III.14). If a proposed new construction site is in a floorplain and a wetland, a single procedure will be carried out under both Executive Orders.

4. *Maximum Period of Residence.* Section 443 provides for the movement of residents of transitional housing to independent living within 24 months, or for a longer period determined by the Secretary as necessary to facilitate the transition. The definition of transitional housing in § 840.5, which specifies that the maximum period of residency is not to exceed 18 months for any individual, will be amended to comport with section 443. This change affects only the maximum period of residency; the requirements of § 840.325 with regard to resident discharge are not affected.

This amendment provides recipients more flexibility for assistance programs, which is sometimes necessary given the broad range of homeless populations that are served by transitional housing projects. HUD will make determinations to exceed the 24-month period on a project-by-project basis. Recipients must apply to HUD at least 90 days before the 24-month residency period expires for a waiver of the 24-month residency requirement, explaining the circumstances that necessitate the longer period.

5. *Use of Acquisition/Rehabilitation Advances to Repay Debt.* Section 445 provides that advances for acquisition/rehabilitation may be used to repay any outstanding debt on a loan made to purchase an existing structure for use as supportive housing. An advance may be used for this purpose only if the structure was not used as supportive housing before the receipt of assistance.

An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(a) A copy of the contract of sale;

(b) A copy of the loan agreement, mortgage agreement, or deed of trust;

(c) Documentation showing the purpose of the loan;

(d) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(e) Certification that the structure has not been used as supportive housing before the receipt of assistance.

This provision is made applicable by the 1988 Amendments Act of all future

applicants, as well as to any recipients that were notified of awards on or after November 1, 1987 whose funds were later deobligated by HUD upon learning of the recipient's intent to use the funds to repay a debt made to purchase the structure.

6. *Limitation on Grants for Moderate Rehabilitation.* Section 446 sets a cap of $200,000 on grants for moderate rehabilitation. Under § 840.110, a grant for moderate rehabilitation of an existing structure was limited to the lowest of (a) $100,000; (b) the project limit (see § 840.110(b)(2)); or (c) 50 percent of the cost of rehabilitation. The amount in (a) will now be $200,000; (b) and (c) will be unchanged. (See III.7 for the special circumstances under which a grant in excess of $200,000 may be available.)

7. *Raised Limits on Advances for Acquisition/Rehabilitation and Grants for Moderate Rehabilitation.* Section 449(a) authorizes the Secretary to raise the limits on advances for acquisition/rehabilitation or grants for moderate rehabilitation from $200,000 to $400,000 in areas determined by the Secretary to have high acquisition and rehabilitation costs. HUD will consider applications for amounts above $200,000 from applicants in geographic areas determined by the Secretary to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701g) by at least 75 percent. (A list of these geographic areas is included in the application package. Applicants may also obtain a list of the areas from HUD Field Offices.) All requirements with regard to matching funds are applicable to increased advances or grants.

8. *Eligible Assistance.* Section 447 provides that a recipient may receive both an advance for acquisition/rehabilitation and a grant for moderate rehabilitation under one application. Under § 840.100(b), assistance was limited to either an advance for acquisition/rehabilitation or a grant for moderate rehabilitaion. HUD anticipates that applicants for both types of assistance will use the advance for acquisition of a structure and the grant for rehabilitation of the structure.

9. *Employment Assistance Programs.* Section 448 authorizes a new type of assistance in transitional housing—grants for establishing and operating employment assistance programs (EAP). Grants will be available for up to 50 percent of the cost of establishing and operating an EAP for residents for one year, and for up to 50 percent of the cost of operating an EAP for up to four additional years. Upon approval of an application requesting assistance for an EAP, HUD will obligate amounts for the period sought, not to exceed five years. The funding level for the first year will not exceed the recipient's estimate of the cost of establishing and operating the EAP for the first year, less the recipient's matching contribution. The funding level for each of the next four years will not exceed the recipient's estimate of the costs of operating the EAP for the first year, less the recipient's annual matching contribution. (See § 840.130 for matching requirements and III.11 for amendments to the matching requirements by the 1988 Amendments Act.)

Recipients are free to develop their own EAP, but to qualify for assistance, the program must provide for at least the following:

(a) Employment of residents in the operation and maintenance of the transitional housing; and

(b) Where necessary and appropriate, payment of reasonable transportation costs of residents to places of employment outside the transitional housing.

Salaries paid to resident employees may be included as an operating cost of an EAP. The cost of transportation for residents to places of employment outside the transitional housing is allowable as an operating cost of an EAP. Transportation costs must not exceed the cost of public transportation. If public transportation is not available, other transportation costs, subject to approval by HUD, may be substituted.

Amounts obligated for an EAP grant are subject to the same rules as amounts obligated for operating costs grants with regard to deobligation. Those rules are set out in § 840.400.

The extent to which an applicant has an EAP, whether assisted by HUD or not, will be a ranking criterion in the competition with other applicants, as described in III.12.

10. *Site Control.* Section 450 provides that an application for assistance must furnish reasonable assurances that the applicant will own or have control of a site for the proposed project not later than six months after notification of an award for grant assistance. Under the final rule at § 840.210(b)(4)(iv)(A), applicants were required to demonstrate control of a site at the time of the application for assistance. This change in the rule will permit approval of applications from projects that are not able to gain control of a site until they have been notified of an assistance award. Reasonable assurance must be satisifed by identification of a suitable site (a suitable site is one that meets the requirements of §§ 840.210 and 840.330 applicable to sites) and:

(a) Certification that the applicant is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD showing that the applicant will gain control of the identified site.

Although section 450 authorizes an award of assistance to applicants that do not have site control, it also provides that the extent to which an applicant has control of a site upon application for assistance will be a ranking criterion in the competition with other applicants, as described in III.12.

Section 450 also provides that an applicant may obtain ownership or control of a suitable site different from the one specified in its application. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it is able to furnish the difference in costs, HUD may cancel or recapture the obligated funds and reallocate the funds to other projects.

If a recipient does not have control of the site within one year after notification of an award for assistance, section 450 requires HUD to cancel or recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for assistance under 24 CFR Part 840, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning that the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

11. *Matching Requirements.* Section 452 revamps the categories that may be used to satisfy the program's matching requirements. Under § 840.130, the only "in-kind" contributions that could be counted toward the match were contributions of materials or structures. Section 452 specifically makes eligible, for matching purposes, the value of time and services contributed by volunteers to carry out the recipient's transitional housing program, at a rate determined by HUD. Thus, applicants may count volunteer contributions of time and services toward the required match. Consistent with the Emergency Shelter Grants program, these contributions will be valued at $5.00 per hour (see 24 CFR 576.71(b)).

Section 452 also specifies that the salaries paid (1) to staff to carry out the grantee's transitional housing program and (2) to residents of transitional housing under an EAP (see III.9) may be counted toward the match. The Department will recognize these salaries to the extent they are paid from sources other than a Federal assistance program, including the transitional housing program. To permit Federal assistance both to pay staff and resident salaries and to be counted toward the match is an inappropriate double-counting of the amounts involved and dilution of the purpose of the program's matching requirements.

Consistent with § 840.130(b), volunteer time and services, and staff and resident salaries, will be included in the matching calculation for the type of assistance to which the contribution relates. For example, if volunteers assist in the rehabilitation of the structure, the contribution will be calculated as a match for rehabilitation assistance. If outside service providers donate supportive services or if volunteers assist in administration of the program, the value of their services will be calculated as a match for operating costs. Salaries paid to residents under an EAP may be calculated as a match for grants for establishing and operating, or operating, the EAP, and staff salaries may be calculated as a match for operating costs assistance.

Other sources for matching funds recognized by HUD under § 840.130 are:

(a) State or local agency funds;

(b) Contributions of materials (§§ 840.130(c)(2) (i) and (ii));

(c) Contribution of a fee ownership in a structure (§ 840.130(c)(2)(iii));

(d) Contribution of a leasehold interest in a structure (§ 840.130(c)(2)(iv)); and the extent of the fair rental value of the structure;

(e) Rental income paid by residents of transitional housing under § 840.320 (§ 840.130(g)).

12. *Ranking Criteria.* The 1988 Amendments Act authorizes two additional criteria to be included in the ranking criteria described in § 840.215(b). Section 448 provides for the inclusion of the extent to which a proposed project contains an employment assistance program meeting the requirements described in III.9, and section 450 provides for the inclusion of the extent to which an applicant has control of the site of the proposed project.

(a) Employment Assistance Program. In assessing an application under this factor, HUD will award the most points to applications that demonstrate that:

(1) The transitional housing will have an employment assistance program providing for:

(i) The employment of all residents either in the operation and maintenance of the housing or outside the housing, except where they are participating in a job training program, are actively seeking employment, or are unable to obtain employment due to disabilities (including mental disabilities) or other causes; and

(ii) The payment of the full transportation costs of the residents to places of employment outside the housing, where such payment is necessary and appropriate.

(2) The employment assistance program is operated with funds that are obtained from sources other than the Supportive Housing program and that have not been used as part of the applicant's matching contribution.

(b) Site Control. In assessing an application under this factor, HUD will award the most points to the applicant that demonstrates that:

(1) The applicant owns or has a contract of sale for the site at the time of the application;

(2) The applicant has a lease for the site for a period of 10 years from the date of the application;

(3) The applicant has an option to purchase the site at the time of the application; or

(4) The applicant has an option to lease the site for a period of 10 years from the date of the application.

13. *Environmental Review.* Section 443 provides that the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law specified by the Secretary that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in III.14.)

As applied to transitional housing, the Department views section 443 as authorizing the Secretary to require States, metropolitan cities, urban counties, tribes, or other governmental entities with general purpose governmental powers to assume the responsibility for assessing the environmental effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, the Department will, in connection with future transitional housing advances or grants, provide for assumption of these responsibilities by jurisdictions with general governmental powers whenever they are deemed to have the legal capacity to assume the responsibilities. This policy will *not* be applied to advances or grants made to governmental entities with *special* or *limited purpose* powers or to *private nonprofit organizations*. HUD will continue to perform the environmental review for these entities, in accordance with 24 CFR Part 50, to the extent required. Relevant reviews completed for purposes of another McKinney Act program or other HUD programs may suffice for purposes of transitional housing, where permitted under Part 58.

An applicant with general purpose governmental powers that believes that it does not have the legal capacity to carry out the environmental responsibilities required by 24 CFR Part 58 should contact the appropriate HUD Field Office for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

With respect to applications for which the applicant will be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold review and ranking process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, § 840.210(b)(7) will not apply to those applications and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in ranking such applications. Similarly, since under § 840.210(b)(7), an application that requires an Environmental Impact Statement (EIS) will not pass threshold review and, therefore, will not be eligible for assistance, this provision will be applied only to the applications for which HUD performs the environmental review. HUD will not enforce this provision

where the applicant performs the environmental review and, after finding that an EIS is necessary, chooses to prepare the EIS.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection and physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environmental review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of this program). Such activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that under section 104(g), HUD may not release transitional housing funds for a project if the grantee, a subgrantee, or another party commits transitional housing funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, such funds) before the grantee submits its request for release of transitional housing funds to HUD.

14. *Floodplain Restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. Therefore, the restrictions with respect to location of projects in floodplains contained in the final rule at § 840.210(b)(4)(iv)(C) no longer apply to projects assisted under the transitional housing program. HUD interprets section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outlined in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees will perform the eight-step process during the environmental review process, whenever they assume other environmental review responsibilities (see III.13).

The eight-step process applies to all applications for projects within the 100-year floodplain and, for critical actions, the 500-year floodplain. Critical actions are defined as those projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents. Applicants with proposed projects located in a floodplain should be aware that the public notification and decisionmaking process takes a minimum of 30 days from the time the first published notice in the process appears. Where HUD will carry out the process, applicants may be required to provide engineering and structural information (*e.g.*, elevations and data) in order to permit HUD to undertake its analysis. If HUD is unable to make a floodplains determination within 60 days from the date it publishes the first notice (where HUD has the responsibility for carrying out the eight-step process), and the applicant has not provided the HUD-requested information in a timely manner, the application will be rejected.

Executive Order 11988 requires HUD or the applicant (where it assumes environmental review responsibilities in III.13) to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site or application for assistance. As part of the eight-step process, HUD or the applicant must reevaluate alternatives to projects/sites located in floodplains and, where HUD performs the process, HUD will assign a higher environmental rating to applications with less hazardous sites. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedures of the Floodplain Management Guidelines.

15. *Drug- and Alcohol-Free Facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential applicants are encouraged to read the Notice on Comprehensive Homeless Assistance Plans, published in the Federal Register on December 28, 1988 (53 FR 52600).

IV. Changes in the Permanent Housing Program

The 1988 Amendments Act made the following changes in the permanent housing program (24 CFR Part 841):

1. *Project Sponsor.* Section 442 authorizes a public housing agency (PHA) to be a project sponsor for a permanent housing project. Before this amendment to the McKinney Act, project sponsorship was limited to private nonprofit organizations. As required by § 841.210(b)(2)(i), the applicant for assistance must be the State in which the permanent housing is to be located. The application must indicate whether the project sponsor is a private nonprofit organization or a PHA. (The requirement of § 841.210(b)(2)(ii)(B) that the applicant demonstrate State approval of the financial responsibility of the project sponsor does not apply when the project sponsor is a PHA).

Section 442 also eliminates the requirement, contained in § 841.210(b)(2)(ii), that the applicant's letter of participation and approval of financial responsibility be signed by the Governor or other chief executive officer of the State. The signature of an authorized State official may be substituted.

2. *Grants for Operating Costs.* Section 447 authorizes grants for operating costs for permanent housing not to exceed 50 percent of the costs for the first year and 25 percent the second year. The definition of operating costs in the final rule governing transitional housing (§ 840.5) will be applicable for permanent housing as well. As defined in § 840.5, operating costs means expenses that a recipient incurs for:

(a) The administration, maintenance, minor or routine repair, security and rental of the housing;

(b) Utilities, fuel, furnishings, and equipment for the housing;

(c) Conducting resident supportive services needs assessments; and

(d) The provision of supportive services to the residents of the housing.

Operating costs do not include expenses that a recipient incurs for debt service in connection with a loan used to finance acquisition or rehabilitation costs under the program.

HUD will provide up to 50 percent of the annual operating costs of permanent housing for the first year and 25 percent for the second year. Upon approval of an application requesting operating cost assistance, HUD will obligate amounts for the period sought, not to exceed two years. Each annual funding level will be equal to an amount not to exceed the recipient's estimate of operating costs for the first year of operation, less the recipient's matching contribution of 50 percent the first year and 75 percent the second year. In each of the two years, HUD will make operating cost payments to the recipient from the amounts obligated. The rules regarding reduction of funding for acquisition/rehabilitation advances and moderate rehabilitation grants in § 841.400 will apply to grants for operating costs. HUD may deobligate the amounts for annual operating costs if the proposed permanent housing operations are not begun within a reasonable time following selection.

3. *Definition of Project.* Section 441(a) of the 1988 Amendments Act redefines the term "project" to include those structures or portions of structures used for permanent housing that receive operating costs assistance or technical assistance only. This amendment does not require a change in the final rule. The definition of "project" in § 841.5 is not limited to permanent housing programs that receive operating costs assistance or technical assistance in connection with acquisition or rehabilitation assistance.

In addition, applicants may now receive operating costs, which is available independent of acquisition or rehabilitation assistance (see IV.2). Under § 841.100(b), technical assistance was available only in connection with acquisition or rehabilitation assistance. This will be changed to provide that technical assistance will be available also in connection with operating costs. However, technical assistance is available only in connection with some other type of assistance.

4. *Availability of Operating Costs Assistance and Technical Assistance for New Structures.* Sections 441 (b) and (c) provide that operating costs assistance and certain types of technical assistance may be made available for permanent housing, without regard to whether the housing is an existing structure. This change will allow a project with a structure not yet completed to receive operating costs assistance and technical assistance without also receiving acquisition or rehabilitation assistance. However, no assistance may be provided for the construction of structures, with the limited exception discussed in IV.5.

In addition to compliance with the criteria set out in IV.2 for grants for annual operating costs, an applicant for operating costs assistance for a permanent housing project involving a structure not yet completed must provide reasonable assurance that construction will be completed within nine months following notification of an award of a grant for operating costs. ("Notification" of an award means the date of the letter from HUD to the applicant notifying the applicant that its application for assistance has been approved.) Reasonable assurance may be satisfied by submission of the following:

(a) Plans and specifications for the proposed structure;

(b) Evidence that construction financing has been obtained; and

(c) A copy of the construction contract for the proposed structure containing the terms and conditions with regard to cost and date of completion.

HUD may deobligate an award for operating costs and technical assistance if the construction has not been completed within nine months following notification of the award.

For permanent housing projects involving structures not yet completed, technical assistance will be offered only in connection with an award of operating costs assistance. Under section 441(c), technical assistance for a structure not yet completed may be available in *operating* permanent housing and *providing supportive services* to the residents of permanent housing. Technical assistance in *establishing* permanent housing is available only in connection with existing structures. A description of technical assistance offered to recipients is contained in § 841.115. Since technical assistance does not involve a grant of funds, HUD will continue to provide technical assistance only through HUD offices. As a conforming change, the language in § 841.5 limiting a permanent housing "project" to "existing" structures will be deleted.

5. *Availability of Grant for Limited New Construction.* Section 449(b) authorizes an advance for new construction in limited circumstances. Under § 841.120(d), assistance for permanent housing may not be used for new construction of housing. Section 449(b) will allow an advance for new construction only if the Secretary finds that the project:

(a) Involves the cooperation of a city and a State university;

(b) Has the land donated by a State university;

(c) Proposes a supportive housing structure of at least 10,000 square feet; and

(d) Proposes a model supportive housing project with a comprehensive support system, including health services, job counseling, mental health services, and housing assistance and advocacy.

Where the proposed site for a new construction advance is located in a

wetland, the procedures required by Executive Order 11990, Protection of Wetlands, must be undertaken before any decision is made on the environmental acceptability of the project site for assistance. These procedures are identical to the procedures under Executive Order 11988, Floodplain Management (see IV.15). If a proposed new construction site is in a floodplain and a wetland, a single procedure will be carried out under both Executive Orders.

6. *Use of Acquisition/Rehabilitation Advances to Repay Debt.* Section 445 provides that advances for acquisition/rehabilitation may be used to repay any outstanding debt on a loan made to purchase an existing structure for use as supportive housing. An advance may be used for this purpose only if the structure was not used as supportive housing before the receipt of assistance.

An applicant for an acquisition/rehabilitation advance that intends to use the advance to repay an outstanding debt on a loan made to purchase an existing structure must provide the following information and documentation as a part of the application for the advance:

(a) A copy of the contract of sale;

(b) A copy of the loan agreement, mortgage agreement, or deed of trust;

(c) Documentation showing the purpose of the loan;

(d) Documentation of the balance owed on the loan, mortgage, or deed of trust; and

(e) Certification that the structure has not been used as supportive housing before the receipt of assistance.

This provision is made applicable by the 1988 Amendments Act to all future applicants, as well as to any recipients that were notified of awards on or after November 1, 1987, whose funds were later deobligated by HUD upon learning of the recipient's intent to use the funds to repay a debt made to purchase the structure.

7. *Limitation on Grants for Moderate Rehabilitation.* Section 446 sets a cap of $200,000 on grants for moderate rehabilitation. Under § 841.110, a grant for moderate rehabilitation of an existing structure was limited to the lower of (a) the project limit (see § 841.110(b)(2)); or (b) 50 percent of the cost of rehabilitation. A grant for moderate rehabilitation will now be limited to the lesser of (a) $200,000; (b) the project limit; or (c) 50 percent of the cost of rehabilitation. (See IV.8 for the special circumstances under which a grant in excess of $200,000 may be available.)

8. *Raised Limits on Advances for Acquisition/Rehabilitation and Grants for Moderate Rehabilitation.* Section 449(a) authorizes the Secretary to raise the limits on advances for acquisition/rehabilitation or grants for moderate rehabilitation from $200,000 to $400,000 in areas determined by the Secretary to have high acquisition and rehabilitation costs. HUD will consider applicants for amounts above $200,000 from applicants in geographic areas determined by the Secretary to have costs that exceed the statutory limits of section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) by at least 75 percent. (A list of these geographic areas is included in the application package. Applicants may also obtain a list of the areas from HUD Field Offices.) All requirements with regard to matching funds are applicable to increased advances or grants.

9. *Eligible Assistance.* Section 447 provides that a recipient may receive both an advance for acquisition/rehabilitation and a grant for moderate rehabilitation under one application. Under § 841.100(b), assistance was limited to either an advance for acquisition/rehabilitation or a grant for moderate rehabilitation. HUD anticipates that applicants for both types of assistance will use the advance for acquisition of a structure and the grant for rehabilitation of the structure.

10. *Site Control.* Section 450 provides that an application for assistance must furnish reasonable assurances that the applicant (or project sponsor) will own or have control of a site for the proposed project not later than six months after notification of an award for grant assistance. Under the final rule at § 841.210(b)(4)(iv)(A), applicants were required to demonstrate control of a site at the time of the application for assistance. This change in the rule will permit approval of applications from projects that are not able to gain control of a site until they have been notified of an assistance award. Reasonable assurance must be satisfied by identification of a suitable site (a suitable site is one that meets the requirements of §§ 841.210 and 841.330 applicable to sites) and:

(a) Certification by the applicant (or project sponsor) that it is engaged in negotiations or in other efforts for the purpose of gaining control of the identified site; or

(b) Other evidence satisfactory to HUD that the applicant (or project sponsor) will gain control of the identified site.

Although section 450 authorizes an award of assistance to applicants (or project sponsors) that do not have site control, it also provides that the extent to which an applicant (or project sponsor) has control of a site upon application for assistance will be a ranking criterion in the competition with other applicants, as described in IV.13.

Section 450 also provides that an applicant (or project sponsor) may obtain ownership or control of a suitable site different from the one specified in its application. An applicant may not change sites during the application review period. Retention of an assistance award is subject to the new site's meeting all requirements for suitable sites. If the acquisition or rehabilitation costs for the substitute site are more than the amount of the advance or grant, the recipient must furnish all additional costs. If the recipient is unable to demonstrate to HUD that it is able to furnish the difference in costs, HUD may cancel or recapture the obligated funds and reallocate the funds to other projects.

If a recipient (or project sponsor) does not have control of the site within one year after notification of an award for assistance, section 450 requires HUD to cancel or recapture the obligated funds and reallocate the funds to other projects.

This provision applies to all future applicants for assistance under 24 CFR Part 841, as well as to any recipients that were notified of awards on or after November 1, 1987 and whose funds were later deobligated by HUD upon learning that the recipient no longer had ownership or control of the site specified in its application or that the recipient wanted to change to a site different from the site specified in its application.

11. *Matching Requirements.* Under § 841.125, which implemented the matching fund requirements of section 425 of the McKinney Act, the recipient was required to match the assistance provided by HUD with at least an equal amount of State or local government funds, 50 percent of which were to be State funds. The 50 percent State funds requirement could have been waived where HUD determined that the State was experiencing a severe financial hardship and that local governments in the area to be served would furnish the difference. Section 452 of the 1988 Amendments Act provides that a State submitting an application for permanent housing must certify that it will supplement the assistance provided by HUD with an equal amount of funds from non-Federal sources. The requirement that a portion of the matching funds be from local government funds and the provision for a waiver for financially burdened States have been eliminated.

Section 452 defines the term "funds from non-Federal sources" to include a number of sources that can be used as matching funds for an advance or grant. HUD will recognize matches to the extent they are paid from sources other than a Federal assistance program, including the permanent housing program, to avoid inappropriate double-counting of the amounts involved and the dilution of the purpose of the program's matching requirements. A State may include in the calculation of its matching funds:

(a) State or local agency funds;

(b) Salaries paid to staff to carry out the program of the recipient;

(c) Time and services contributed by volunteers to carry out the program of the recipient, valued at $5.00 an hour;

(d) Contributions of materials;

(e) Contribution of a fee ownership in a structure to the extent of the fair market value of the structure;

(f) Contribution of a leasehold interest in a structure to the extent of the fair rental value of the structure;

(g) Rental income paid by residents of permanent housing under § 841.320.

Although section 452 does not include cash contributions from third parties as a source of non-Federal funds, HUD recognizes such contributions as a source of matching funds.

HUD will include the value of the matching funds in the calculation for the type of assistance to which they are related. For example, a contribution of materials will be included in the calculation of a match for an acquisition/rehabilitation advance or a moderate rehabilitation grant if the materials will be used in the rehabilitation of a structure for use as permanent housing. A contribution of materials that would fall within the definition of operating costs under IV.2 will be included in the match for operating costs assistance. A contribution of a fee ownership in a structure will be included in the match for an acquisition/rehabilitation advance, and a contribution of a leasehold interest will be included in the match for a grant for operating costs.

Volunteer time and services will also be included in the calculation of the match for the type of assistance to which such time and services are related. For example, if volunteers assist in the rehabilitation of the structure, the contribution will be calculated as a match for an acquisition/rehabilitation advance or a moderate rehabilitation grant. If outside service providers donate supportive services or if volunteers assist in administration of the program, the value of their services will be calculated as a match for operating costs. Staff salaries will be included as a match for operating costs.

12. *Number of Residents.* Under § 841.325, a permanent housing program consisting of dwelling units in a rental building, condominium, or cooperative may not serve more than eight persons and their families (if the head of the family or spouse of the head of the family is a handicapped homeless person). If the permanent housing is a group home, the project may not serve more than eight handicapped homeless persons, and may not serve the families of such persons. Section 444 of the 1988 Amendments Act permits HUD to waive this limitation on the number of residents if the applicant demonstrates that local market conditions dictate the development of a larger project, and that a larger project will achieve the neighborhood integration objectives of the program within the community.

HUD anticipates that requests for waivers of § 841.325 will be from project sponsors of permanent housing located in densely populated urban areas where supportive services, such as health facilities, employment opportunities, or public transportation, are concentrated. HUD will grant the waivers on a case-by-case basis.

13. *Ranking Criteria.* The 1988 Amendments Act authorizes an additional criterion to be included in the ranking criteria described in § 841.215(b). Section 450 provides for the inclusion of the extent to which an applicant has control of the site of the proposed project. In assessing an application under this factor, HUD will award the most points to an applicant that demonstrates that:

(a) The applicant (or project sponsor) owns or has a contract of sale for the site at the time of the application;

(b) The applicant (or project sponsor) has a lease for the site for a period of 10 years from the date of the application;

(c) The applicant (or project sponsor) has an option to purchase the site at the time of the application; or

(d) The applicant (or project sponsor) has an option to lease the site for a period of 10 years from the date of the application.

14. *Environmental Review.* Section 443 provides that the provisions of, and regulations and procedures applicable under, section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) shall apply to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that, in lieu of the environmental protection procedures otherwise applicable, the Secretary may provide for the release of funds for particular projects to grantees who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA) and the other provisions of law specified by the Secretary that would apply to the Secretary were the Secretary to undertake such projects as Federal projects. HUD regulations implementing section 104(g) are found in 24 CFR Part 58, and the Secretary has specified the other provisions of law under which environmental responsibilities are to be assumed by grantees in 24 CFR 58.5. (These authorities include the floodplain restrictions discussed in IV.15.)

As applied to permanent housing, the Department views section 443 as authorizing the Secretary to require States (as the applicants under § 841.5) to assume the responsibility for assessing the environmental effects of each application for assistance in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR Part 58. In accordance with the new statutory authorization, HUD will, in connection with future permanent housing advances and grants, provide for assumption of these responsibilities by States. Relevant reviews completed for purposes of another McKinney Act program or other HUD program may suffice for purposes of permanent housing, where permitted under Part 58.

Since applicants will now be responsible for performing the environmental review under section 104(g) and 24 CFR Part 58, the environmental review process will be independent of the threshold review and ranking process, and the applicant may complete the environmental review after those processes and after selection for funding. Therefore, § 841.210(b)(7) will not be in effect, and HUD will not consider environmental impacts or time delays associated with mitigation measures for such proposals in ranking the applications. Similarly, the provision in § 841.210(b)(7) that applications requiring Environmental Impact Statements (EIS) will not pass threshold review will not be enforced.

On August 10, 1988, HUD amended its environmental regulations at 24 CFR Parts 50 and 58 to exclude certain activities under HUD homeless assistance programs from the NEPA requirements of Parts 50 and 58 (53 FR 30186). (The amendments were published in conjunction with HUD's final rule governing the Emergency Shelter Grants Program.) These "categorical exclusions" from NEPA review are for activities that HUD

believes lack potential significant effect on the human environment. Specifically, the activities consist of such services as health, substance abuse and counseling services, the provision of meals and payment of rent, utility and maintenance costs, and similar activities that do not involve physical change to buildings or sites. Environmental review focuses on new site selection or physical development activities such as construction, property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not excluded from the individual compliance requirements of other environmental statutes, executive orders, and HUD standards listed in §§ 50.4 and 58.5, where applicable. However, activities consisting solely of supportive services and software normally do not require environmental review under NEPA *or* the related authorities if they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of the program). Such activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58. Procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and to the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

Applicants and grantees are cautioned that, under section 104(g), HUD may not release permanent housing funds for a project if the grantee, a subgrantee, or another party commits permanent housing funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, such funds) before the grantee submits its request for release of permanent housing funds to HUD.

15. *Floodplains Restrictions.* Section 451 of the 1988 Amendments Act requires that the flood protection standards for housing acquired, rehabilitated, or assisted with Supportive Housing Demonstration funds may be no more restrictive than those applicable under Executive Order 11988, Floodplain Management (May 24, 1977) to the other programs under Title IV of the McKinney Act. Therefore, the restrictions with respect to location of projects in floodplains contained in the final rule at § 841.210(b)(4)(iv)(C) no longer apply to applicants for assistance under the permanent housing for the handicapped homeless program. HUD interprets section 451 to mean that, for projects located in floodplains, the eight-step process of public notification and decisionmaking outline in the U.S. Water Resources Council Floodplain Management Guidelines (43 FR 6030, February 10, 1978) must be undertaken by the applicant before any decision is made on the environmental acceptability of the project site for homeless assistance. Grantees with projects in floodplains will perform the eight-step process at the time they perform the environmental review (see IV.14).

The eight-step process applies to all applications for projects for critical actions within the 500-year floodplain. Critical actions include those projects intended to serve developmentally disabled, chronically mentally ill, or mobility impaired residents and, therefore, include all permanent housing projects. Applicants with proposed projects located in a 500-year floodplain should be aware that the public notification and decisionmaking process takes a minimum of 30 days from the time the first published notice in the process appears.

Executive Order 11988 requires the applicant to consider alternatives to avoid adverse impacts associated with the occupancy and modification of floodplains. The alternatives may include actions resulting in less risk to human life or property. The review process may result in specific mitigation requirements or rejection of the site. As part of the eight-step process, the applicant must reevaluate alternatives to projects/sites located in floodplains. If, after initial approval, an applicant changes the site, any new site will be subject to a complete environmental review, including, as applicable, the eight-step public notification and decisionmaking procedure for sites located in floodplains.

The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) and HUD regulations prohibit the approval of applications for projects/sites located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless: (1) The community in which the area is situated is participating in the National Flood Insurance Program (not suspended or withdrawn) (see 44 CFR Parts 59–79) or less than a year has passed since FEMA notification regarding such hazards; and (2) flood insurance is obtained as a condition of approval of the application.

Applicants with projects/sites (determined through the eight-step process to be environmentally acceptable) that are located in an area that has been identified by FEMA as having special flood hazards will be required to obtain and maintain flood insurance under the National Flood Insurance Program. This is a separate requirement from the Executive Order 11988 procedures, and the availability of flood insurance does not satisfy the eight-step public notification and decisionmaking procedures of the Floodplain Management Guidelines.

16. *Drug- and Alcohol-Free Facilities.* Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, potential applicants are encouraged to read to Notice on Comprehensive Homeless Assistance Plans, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

V. Application Process—Transitional Housing

One of the purposes of this Notice is to announce the availability of $65 million in funds for transitional housing appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989. The Department also is announcing the availability of an additional $24.6 million in funds, which has been reallocated to the transitional housing program from funds that were set aside from FY 1987 and FY 1988 appropriations for the permanent housing program but were not obligated for that program. Section 455 of the 1988 Amendments Act requires the Secretary to reallocate to transitional housing any amounts set aside for permanent housing that will not be required to fund approvable applications for permanent housing funds. Therefore, the Department has reallocated $24.6 million in unused funds set aside for permanent housing to the transitional housing program, making a total availability of $89.6 million in funds for transitional housing.

Section 428(b) of the McKinney Act requires that at least $20 million in funds for any fiscal year be set aside for transitional housing projects that serve homeless families with children. Therefore, at least $20 million of the total $85 million in funds for transitional housing will be set aside for projects

that serve homeless families with children.

An application package is available that describes the information and documents that transitional housing applicants must submit. The application package identifies all information and documents that must be submitted by the application deadline, as well as the information and documents that must be submitted upon preliminary approval of the application. The package will be provided upon the written or oral request of any party made to the Office of Supportive Housing Demonstration Program at the address set forth in the beginning of this document, or by calling (202) 755–1514 or 755–1525. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015. (These numbers are not toll-free.)

Applications must be in the form prescribed by HUD and must be received at the specified address no later than 5:15 p.m. (e.s.t) on March 30, 1989. Late-filed and incomplete applications will be rejected.

Following the expiration of the March 30, 1989 deadline, HUD headquarters will review, rate, and rank the applications in a manner consistent with the selection procedures described at §§ 840.207–840.225, as modified by the statutorily required changes to those procedures announced in section III of this Notice. HUD will announce its final selections no later than July 10, 1989. No information regarding the status of applications will be released until final selections are made.

VI. Application Process-Permanent Housing

This Notice announces the availability of $15 million in funds for permanent housing appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989.

An application package is available that describes the information and documents required from applicants for assistance for permanent housing projects. The application package identifies all information and documents that must be submitted by the application deadline, as well as the information and documents that must be submitted upon preliminary approval of the application. The package will be provided to eligible states upon written or oral request to the Office of Supportive Housing Demonstration Program at the address set forth in the beginning of this document, or by calling (202) 755–1514 or 755–1525. Hearing or speech impaired individuals may call HUD's TDD number (202) 426–0015. (These numbers are not toll-free.)

Applications must be in the form prescribed by HUD and must be received at the specified address no later than 5:15 p.m. (e.s.t.) on April 27, 1989. Late-filed and incomplete applications will be rejected.

Following the expiration of the April 27, 1989 deadline, HUD headquarters will review, rate, and rank the applications in a manner consistent with the selection procedures described at §§ 841.207–841.255, as modified by the statutory required changes to those procedures announced in section IV of this notice. HUD will announce its final selections no later than July 31, 1989. No information regarding the status of applications will be released until final selections are made.

VII. Other Matters

The revised collection of information requirements contained in this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections V and VI of this notice have been determined by the Department to contain collection of information requirements not included in the Department's assessments of the burden of these requirements when they were originally approved by OMB on July 1, 1988 under control number 2502–0361. Information on the revised reporting burden is provided as follows:

	Number of respondents	Frequency of response	Hours per response	Burden hours
Permanent HSG:				
—Applications	100	1	44	4,400
—Recordkeeping	100	1	1	100
—Environ Review	100	1	14	1,400
Transtl HSG:				
—Applications	300	1	44	13,200
—Recordkeeping	300	1	1	300
—Environ Review				
Total Annual Burden				19,400

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332. The Finding is available for public inspection during regular business hours at the Office of Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that some of the policies in this Notice will have a potential significant impact on the formation, maintenance, and general well-being of homeless families. The Notice makes available $100 million for the Supportive Housing program. Both transitional housing and permanent housing that serve families, including families with children, are eligible for funding under the program. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and in the case of transitional housing, by encouraging them to acquire the skills and knowledge necessary to live independently in mainstream American society.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the amendment made by section 443 of the 1988 Amendments Act will have federalism implications. That section provides that HUD shall apply the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action

under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this Notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the delegation of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to review under Executive Order 12612.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 issued by the President on February 17, 1981. An analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. Only a limited number of small entities will be eligible for and affected by this program because: (1) The current funding level will support only a limited number of recipients; and (2) recipients under the program include small and large private nonprofit organizations and government entities.

This document was not listed on the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974).

The Catalog of Federal Domestic Assistance program number is 14.178.

Dated: January 3, 1989.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89-293 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 840 and 841

[Docket No. R-89-1433; FR-2581]

Supportive Housing Demonstration Program; Cross Reference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere in today's **Federal Register**, HUD is announcing the availability of $104.6 million for the Supportive Housing Demonstration program. The Notice also announces changes to the Supportive Housing final rule (24 CFR Parts 840 and 841), which implement amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Although the changes are published for immediate effect, the public is invited to comment on the changes for consideration in developing amendments to the final rule within 12 months of enactment of the McKinney legislative amendments. Comments received by March 27, 1989, will be considered in amendments to the final rule.

Dated: January 5, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing.

[FR Doc. 89-417 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-27-M

federal register

Monday
January 9, 1989

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Emergency Shelter Grants Program; Notice and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-89-1908; FR-2562]

Emergency Shelter Grants Program; Notice of Fund Availability; Amended Program Requirements

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $46,500,000 for the Emergency Shelter Grants (ESG) program, appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). The Notice also implements amendments to the ESG program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). These amended requirements: (1) Enable States to distribute ESG funds directly to private nonprofit organizations if the relevant unit of general local government certifies that it approves the proposed project; (2) increase from 15 to 20 percent the proportion of ESG assistance that a State or unit of local government may use to provide essential services; (3) in the case of States, provide that each State administer its grant so that on an aggregate basis, the amount that its State recipients expend on essential services does not exceed the 20 percent limitation; (4) permit ESG funds to be used for homeless prevention efforts; (5) in the case of assistance solely for operating costs and essential services, require that the homeless services or shelters be made available for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served; and (6) provide for the assumption of environmental review responsibilities by certain grantees and recipients. This Notice, and the public comments received by the Department on the Notice, will form the basis for a final rule to be published no later than November 7, 1989.

EFFECTIVE DATE: January 9, 1989.

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

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division, Room 7282, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5977. For matters relating to Emergency Shelter Grants to States, James N. Forsberg, Director, State and Small Cities Division, Room 7184, telephone (202) 755-6322. Hearing or speech impaired individuals may call HUD's TDD number: (202) 426-0015. [These are not toll-free telephone numbers].

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0089. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

The Emergency Shelter Grants (ESG) program was first enacted as Part C of Title V of HUD's appropriation for fiscal year 1987.[1] The Part C program authorized HUD to make grants to States, units of general local government, and private nonprofit organizations for the renovation, rehabilitation, or conversion of buildings for use as emergency shelters for the homeless, for the payment of certain operating expenses, and for essential social service expenses in connection with emergency shelters for the homeless. HUD published a proposed rule and program requirements to implement the ESG program on December 17, 1986 (51 FR 45278).

On July 22, 1987, President Reagan approved the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77) (the McKinney Act). Subtitle B of Title IV of the McKinney Act reauthorized, with amendment, the ESG program. HUD published a proposed rule for Subtitle B on November 6, 1987 (52 FR 42664). A final rule governing the ESG program was published on August 10, 1988 (53 FR 30186) (ESG final rule).

Because the Department perceived that certain McKinney Act provisions required implementation before the ESG final rule could take effect, two Notices were separately published in the **Federal Register**. On September 4, 1987, the Department published a Notice (52 FR 33790) identifying the McKinney Act provisions that would be implemented immediately, and those that would take effect in the ESG final rule. On October 19, 1987, HUD published a Notice (52 FR 38864) implementing the authority under section 414(b) of the McKinney Act to waive the percentage limitation on essential services by units of local government.

II. 1989 Fisal Year Appropriations; Amendments Under the Stewart B. McKinney Homeless Assistance Amendments Act of 1988

The Department received an appropriation of $46,500,000 for fiscal year 1989 for the Emergency Shelter Grants program under the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988) (the Appropriations Act).

Subsequently, on November 7, 1988, President Reagan approved the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) (the 1988 McKinney Act). The 1988 McKinney Act makes a number of substantive amendments to the ESG final rule. These include: (1) Permitting States to distribute ESG funds directly to private nonprofit organizations if the relevant unit of general local government certifies that it approves the

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986) and Pub. L. 99-591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1986).

proposed project; (2) increasing from 15 to 20 percent the proportion of ESG assistance that a State or unit of local government may use to provide essential services; (3) in the case of States, providing that each State administer its grant so that on an aggregate basis the amount that its State recipients expend on essential services does not exceed the 20 percent limitation; (4) permitting ESG funds to be used for homeless prevention efforts; (5) in the case of assistance solely for operating costs and essential services, specifying that the homeless services or shelters be made available for the period during which the assistance is provided, without regard to a particular site or structure, as long as the same general population is served; and (6) providing for the assumption of environmental review responsibilities by certain grantees and recipients.

In accordance with section 485 of the 1988 McKinney Act, the Department is required to implement the 1988 amendments by a Notice, with a final rule to be published within 12 months of the date of statutory enactment. Consequently, the provisions discussed below are effective immediately and, combined with those provisions of the August 10, 1988 ESG final rule that remain unaffected by this Notice, will govern the allocation and use of funds under the ESG program until the final rule is published.

1. Distribution of Assistance by States to Private Nonprofit Organizations

Section 413 of the McKinney Act required States to distribute all their grant amounts to units of general local government. Section 421 of the 1988 McKinney Act amended section 413 to permit States to distribute funds to private nonprofit organizations as well. The Senate Committee on Banking, Finance and Urban Affairs expressed a specific concern resulting from States' inability to contract directly with nonprofits under the initial ESG legislation:

> Under the existing ESG program, States are required to contract with local governments which, in turn, may contract with nonprofit organizations. The Committee believes that the limitation has impaired program operation in two significant ways.
>
> First, the "three-step contracting" requirement has caused delays and administrative burden, particularly in smaller cities and towns where government boards with contracting authority meet sporadically.
>
> Second, many states have shelter assistance programs that predate the ESG program and provide for direct contracting between the state and shelter operator; the ESG program, therefore, has required the establishment of two parallel administrative systems. (S. Rep. No. 100-393, 100th Cong., 2d Sess. 4 (1988).

However, it should be noted that distributions to nonprofit organizations are permitted only where the unit of general local government in which the assisted projects are to be located certifies that it approves the proposed project. This certification must be submitted to the State at the time the nonprofit organization seeks funding from the State. If the nonprofit organization intends to provide homeless assistance in a number of jurisdictions, the certification of approval must be submitted by each of the units of general local government in which the projects are to be located.

2. Essential services

Section 414(a)(2) of the McKinney Act made eligible for ESG funding the provision of essential services, such as those concerned with employment, health, drug abuse, or education. This authority, however, was subject to the following two limitations:

(a) The unit of general local government must not have provided the essential services during the preceding 12-month period; and

(b) Not more than 15 percent of the amount of any ESG assistance to a unit of general local government could be used for these services.

Section 414(b) authorized HUD to waive the 15 percent limitation in certain circumstances.

A. *The 12-month limitation.* The Department implemented the 12-month limitation relating to essential services in § 576.21(a)(2)(i) of the ESG final rule. That provision required a unit of local government to demonstrate that the essential service was either:

—A new service; or

—A quantifiable increase in the level of the service that the unit of government provided with local funds during the 12 months before it received its initial ESG grant amounts.

Section 422(b) of the 1988 McKinney Act amended the 12-month limitation by permitting a unit of local government to use ESG funds to "complement" its provision of essential services. The Department construes the term "complement" to be consistent with the existing regulatory standard under § 576.21(a)(2)(i): *i.e.*, a new service or a "quantifiable increase" in the level of existing essential services "complements" those services. Thus, § 576.21(a)(2)(i) will apply without amendment to the proposed use of ESG amounts for essential services.

B. *Percentage limitation.* Section 422(a)(1) of the 1988 McKinney Act revises the percentage limitation on essential services by increasing the percentage from 15 to 20 percent. Due to an apparent oversight, Congress failed to provide for a parallel amendment to section 414(b) of the McKinney Act, which gives the Department the authority to waive the essential services limitation. Currently, the Department has the authority to waive the *15 percent* limitation. HUD is construing the 1988 McKinney Act increase in the essential services limitation from 15 to 20 percent as implicitly authorizing the Department to apply its waiver authority to the 20 percent limitation.

Section 422(a)(2) of the 1988 McKinney Act provides that the 20 percent limitation is to be measured against "the aggregate amount of all [ESG] assistance to a State or a local government," rather than to "the amount of any assistance to a local government," as required under existing law. This provision only affects grants made to States. Grant amounts that the State distributes to *individual* State recipients are not subject to the percentage limit. Thus, States are free to vary the percentage of ESG grant amounts that State recipients may use for essential services above or below the 20 percent standard. However, each State must administer its grant so that, on an aggregate basis, the amount expended on essential services does not exceed the applicable limit under § 576.21.

For ESG formula cities and counties, as well as units of local government receiving reallocated funds from HUD, the 20 percent limitation on essential services will continue to apply at the local level. In accordance with existing requirements at § 576.21(a)(2)(ii) of the ESG final rule, the limitation will apply to the total of each grant amount provided by HUD to these entities.

3. Homeless prevention

Section 423 of the 1988 McKinney Act provides for a new category of eligible activities under the ESG program—homeless prevention. The Senate Committee Report offers the following insight into the purpose of this legislative amendment:

> The Committee Bill would make homeless prevention an eligible activity under the ESG program. The McKinney Act has been criticized for its neglect of the "at-risk" homeless population. The argument for prevention is compelling: catching a family before it falls into homelessness is probably more cost-effective and certainly less disruptive than serving the family's needs after they become displaced. * * *
>
> Because the Committee believes that states and localities should have a great degree of

flexibility in using ESG funds for homeless prevention efforts, the Committee bill intentionally does not define the activities that would qualify as "homeless prevention." (S. Rep. No. 393, 100th Cong., 2d Sess. 5–6 (1988).)

Although Congress did not specify an exhaustive list of the types of activities that qualify as "homeless prevention," the Senate Committee Report on the 1988 McKinney Act listed several examples: (1) Short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; (2) security deposits or first month's rent to enable a homeless family to move into its own apartment; (3) programs to provide mediation services for landlord-tenant disputes; or (4) programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure. (*Id.*, at 5)

Consistent with legislative intent, the Department intends to provide the maximum amount of flexibility to States and localities to design programs to prevent homelessness. However, the following statutory criteria apply to the extent that ESG funds are used to provide financial assistance to families that have received eviction notices or notices of termination of utility services:

(1) The inability of the family to make the required payments must be due to a sudden reduction in income;

(2) The assistance must be necessary to avoid eviction of the family or termination of services to the family;

(3) There must be a reasonable prospect that the family will be able to resume payments within a reasonable period of time; and

(4) The assistance must not supplant funding for preexisting homeless prevention activities from any other sources.

In implementing these statutory criteria, the Department offers the following guidance:

—Homeless prevention assistance is available to "families" that meet the requisite criteria. The Department interprets "families" to include one-person families.

—The third criterion requires that there be a reasonable prospect that the family will be able to resume rental or utility payments "within a reasonable period of time." The Department construes this phrase to mean a reasonable period of time, as determined by the ESG grantee. Hence, this period will not be uniform, but will vary based upon conditions within a particular jurisdiction.

—The fourth criterion prohibits ESG homeless prevention assistance from being used to supplant funding for preexisting homeless prevention activities being provided from any other source, including Federal assistance programs. In implementing this requirement, the Department will require that ESG assistance be used either to implement new homeless prevention activities, or to provide a quantifiable increase in the level of homeless prevention activities already being provided from any other source.

It should be noted that even though homeless prevention activities are not restricted to essential services, the 1988 McKinney Act provides that these activities are to be treated as essential services for purposes of calculating the 20 percent limitation. Thus, the 20 percent cap applies to the *total* ESG grant amounts that are used for essential services, including homeless prevention activities that are not essential services.

Similarly, for purposes of qualifying for a waiver of the 20 percent limitation on essential services under § 576.21(b) of the final rule, this Notice provides that homeless prevention activities are to be regarded as essential services. Thus, the current regulatory standard for waiver of the 20 percent limitation on essential services remains intact: *i.e.*, (1) activities other than essential services (i.e., maintenance and operating costs, renovation, rehabilitation, and conversion activities) are adequately provided from other public and private resources; and (2) the amount in excess of the 20 percent limitation that is proposed for use for essential services cannot practicably be used for eligible activities other than essential services.

While it is difficult to envision a situation in which a State could adequately demonstrate that it meets the waiver requirements, the Department will entertain waiver requests from States that make the requisite showing. HUD specifically requests public comments on the feasibility of modifying, in the case of States, the current standard for obtaining a waiver of the 20 percent limitation on essential services.

4. Required Use of Building as a Shelter

Section 415(c)(1) of the 1987 McKinney Act requires each ESG recipient to certify to HUD that it will maintain as a homeless shelter, for a statutorily mandated time period, any building for which ESG assistance is used. Under section 424 of the 1988 McKinney Act, this statutory "use" requirement continues to be 10 years in the case of ESG activities involving major rehabilitation or conversion. Similarly, the use requirement for rehabilitation activities (other than major rehabilitation or conversion) remains unchanged at three years.

However, the use requirements for activities conducted under sections 414(a) (2) and (3) of the McKinney Act—essential services and maintenance and operating costs, respectively—have been legislatively revised. The current regulations (§ 576.73(a)(4)) contain the following use requirements for assisted essential services and maintenance and operating costs: there is no length of use requirement for essential services (§ 576.73(a)(2); the leasing of commercial facilities triggers a three-year use requirement (§ 576.73(a(3)); and all other operating and maintenance costs have a one-year use requirement.

Section 424 of the 1988 McKinney Act now specifies that an ESG recipient using program funds to provide essential services, or maintenance and operating costs, must carry out the assisted activities "for the period during which [ESG] assistance is provided." The Act further provides that recipients may use a different site or shelter during this period, as long as the same general population is served. The House Committee Report describes this legislative amendment, as follows:

> The Committee believes that the current [time-specific use] requirement is overly burdensome to homeless shelter providers who provide assistance during seasonal periods or during a limited amount of time * * *. The Committee believes that the current requirement discourages homeless shelter providers from utilizing program funds, and unfairly could require shelter providers to keep shelters operating years after the federal funds have been expended. (H. Rep. No. 718, Part 2, *supra.*, at 34.)

In implementing this statutory requirement, the Department is adopting the following procedure for ESG activities involving solely essential services or maintenance and operating costs:

—The shelter operator or service provider may use one or more sites or structures to carry out its activities, but must serve the same general population. The Department construes the term, "same general population", to mean:

• The types of homeless persons originally served with the ESG assistance, such as homeless persons generally or specific categories of the homeless, including battered spouses, runaway children, families, or chronically mentally ill individuals); *or*

• Persons in the same geographical area.

—If the operator or provider receives ESG amounts from a State or unit of general local government, the use requirement continues until the ESG funds are expended, or for such additional time as the parties may agree upon in their funding agreement. This implements the minimum time period prescribed in the 1988 McKinney Act, while providing States and localities the discretion to require assisted shelters to continue operating even after ESG amounts have been expended.

—If the operator or provider receives funds directly from HUD, the grant agreement will require that the same general population be served until the grant amounts are expended.

—If the operator or provider receives funds directly from HUD, the grant agreement must contain an assurance that if the grantee later intends to vary the location of the shelter, the same general population will continue to be served. In all other cases, the jurisdiction with which the operator or provider has the funding agreement must ensure compliance with the "same general population" requirement.

The same procedure applies to the leasing of commercial facilities under section 414(a)(3) of the McKinney Act. However, it should be noted that the Department will continue to provide that commercial facilities may be used as a homeless shelter only if the conditions in § 576.51(b)(2)(iv) (B) and (C) of the ESG final rule are satisfied: *i.e.*, (i) the space is being rented at substantially less than the daily room rate otherwise charged by the facility; and (ii) the grantee or State recipient has determined that the use of these facilities constitutes the most cost-effective means of providing emergency shelter for the homeless in its jurisdiction. If a nonprofit organization wishes to use grant amounts that it receives from the State to lease commercial facilities as a homeless shelter, the certification of approval of the project by the unit of general local government (discussed earlier) must also include the cost-effectiveness determination required by § 576.51(b)(2)(iv)(C).

Finally, it should be noted that under the 1988 McKinney Act, there is no statutory use requirement for newly eligible homeless prevention activities conducted under section 414(a)(4) of the McKinney Act.

5. Environmental Review

Section 482 of the 1988 McKinney Act revised the environmental review procedures for assistance and projects under Title IV of the McKinney Act by making applicable the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974).

Section 104(g)(1) authorizes HUD to provide for the release of funds for particular projects to "recipients of assistance" under title I of the HCD Act of 1974 that assume all of HUD's responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and certain other environmental authorities. Section 104(g)(2) contains the requirements for HUD approval of the release of funds for specific projects. Section 104(g)(4) provides that in the case of grants to States in the States program, the State will perform HUD's role with respect to the release of funds to particular projects to be undertaken by units of general local government receiving grant amounts from the State. HUD regulations implementing section 104(g) are found in 24 CFR Part 58. Aside from the NEPA requirements, the additional environmental authorities with which recipient States and units of local government under the HCD Act of 1974 must comply are listed in 24 CFR 58.5.

In applying the regulations and procedures under section 104(g) to the McKinney Act, the Department is providing for the assumption of environmental review responsibilities only by States and units of general local government (including Territories). It will not permit assumption of these responsibilities by nonprofit organizations that receive reallocated funds directly from HUD. This is consistent with HUD's current regulations and procedures under section 104(g), which permit assumption of environmental review responsibilities only by States or units of general local government. Moreover, in order to do an environmental review under NEPA and related authorities, a recipient must possess certain land use powers. Nonprofit entities do not possess these powers, and would be unable successfully to carry out these environmental responsibilities. The Department will perform the required environmental review for nonprofit grantees in accordance with 24 CFR Part 50 and §§ 576.51(b)(2)(iv) and 576.53(c)(2) and (3).

The Department intends to adopt the following environmental review procedures for States and units of general local government in the Emergency Shelter Grants program:

—In the case of ESG grants to States that are distributed to units of general local government, the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and the State will assume HUD's functions with regard to the release of funds, as provided by section 104(g)(4).

—In the case of ESG grants to States that are distributed to nonprofit organizations, the State will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

—In the case of ESG grants that a unit of general local government distributes to nonprofit organizations, the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

—In the case of grants to units of general local government (including ESG formula cities and counties and Territories), the unit of general local government will assume the environmental responsibilities specified in section 104(g)(1) and HUD will perform the release of funds functions of section 104(g)(2).

Accordingly, for States and units of general local government assuming responsibilities under section 104(g), the following regulatory provisions do not apply:

—The prohibition contained in § 576.51(b)(2)(vi) against undertaking, or committing funds to, activities to be assisted with ESG amounts before HUD's environmental review is complete.

—Section 576.53(c)(2)'s provision for conditional grants to ensure that assisted activities do not begin before HUD completes its environmental review.

The matters covered by these provisions will be governed by 24 CFR Part 58.

In addition, § 576.53(c)(3) prohibits HUD from authorizing the use of ESG amounts for activities, properties, or locations that would result in unavoidable significant impact on the human environment, as determined by the Department's environmental review. As noted earlier, this provision will continue to apply to the entities for which HUD will continue to conduct environmental reviews: nonprofit organizations.

This provision will not, however, apply to States and units of general local government that assume environmental review responsibilities under section 104(g): The determination to proceed with a project within

§ 576.53(c)(3)'s description will be made by the jurisdiction involved. These jurisdictions should note, however, that the 180-day deadline on the obligation of grant amounts under § 576.55 (a) and (b) will continue to apply. Thus, although the jurisdiction may choose to go through the more elaborate environmental review procedure for projects described in § 576.53(c)(3), it must meet the current regulatory deadline for obligating grant amounts. Failure to obligate the amounts within the required time will result in their reallocation under § 576.55(c).

Recipients are cautioned that under section 104(g), HUD or a State may not release ESG funds for a project if the recipient, subrecipient, or other party commits ESG funds (*i.e.*, incurs any costs or expenditures to be paid for, or reimbursed with, ESG funds) before the recipient submits its request for release of ESG funds to HUD or the State.

Finally, it should be noted that the final ESG rule contained amendments to HUD's environmental regulations at 24 CFR Parts 50 and 58. These amendments excluded certain McKinney Act activities from the NEPA requirements of those Parts (53 FR 30186). These "categorical exclusions" from NEPA review are for activities that HUD believes lack potential significant effect on the human environment, including services such as health, substance abuse and counseling services; the provision of meals and the payment of rent; utility and maintenance costs; and similar activities that do not involve physical alterations to buildings or sites.

Environmental review focuses on new site selection and physical development activities, such as property rehabilitation, renovation, and conversion. Although the activities described above and certain other activities may be categorically excluded from the NEPA requirements, they are not automatically excluded from the individual compliance requirements of other environmental statutes, Executive Orders, and HUD standards listed in §§ 50.4 and 58.5. However, activities consisting solely of supportive services and other "soft-cost" activities normally do not require environmental review under NEPA *or* the related authorities, provided once again that they do not directly require physical development or site selection (*i.e.*, use of a building not previously used for purposes of the program involved). Activities that trigger neither NEPA nor the related authorities are defined as "exempt" under Part 58.

Where applicants exercise environmental review under section 104(g) and Part 58, procedures for applicant submission of environmental certifications and Requests for Release of Funds apply to new site selections and the funding of physical development activities. These procedures do not apply to activities that are determined and documented to be "exempt."

As part of the final rule, the Department intends to amend Part 58 to reflect the changes described in this Notice.

6. Drug- and Alcohol-Free Facilities

Section 402 of the 1988 Amendments Act requires grantees, recipients, and project sponsors under each of the homeless housing programs authorized by Title IV of the McKinney Act to administer, in good faith: a policy designed to ensure that the homeless facility is free from the illegal use, possession or distribution of drugs or alcohol by its beneficiaries. For more information concerning this requirement, ESG grantees and recipients are encouraged to read the Notice on the Comprehensive Homeless Assistance Plan, published in the **Federal Register** on December 28, 1988 (53 FR 52600).

7. Timing Considerations

A. Comprehensive Homeless Assistance Plans

The applicability of the Comprehensive Homeless Assistance Plan requirements to the 1989 ESG program may raise some timing questions. For example, with respect to the reallocation provisions triggered by failure to have an approved Plan (section 413(d) of the McKinney Act), the Department interprets this provision as intended to provide States and formula cities and counties a reasonable period within which to obtain Plan approval. Consequently, HUD interprets the 90-day statutory deadline for this year to begin running from the date the Department published its Notice on the Comprehensive Homeless Assistance Plan, *i.e.*, from December 28, 1988.

B. State Application Deadlines

It should be noted that in the ESG final rule, the application deadline for States under § 576.51(a) was revised from 75 days to 45 days after the date of notification to the State of its grant allocation. The Department wishes to emphasize that this 45-day State application deadline is the operative deadline for purposes of the funding allocation announced in this Notice.

C. Obligation of Funds—Homeless Prevention

Under the ESG final rule (§ 576.55(a)), States are required to make available to their States recipients all emergency shelter grant amounts received under § 576.43 within 65 days of the grant award by HUD. Thereafter, each State recipient is required to obligate all of its grant amount within 180 days of the date on which the State made the grant amounts available to it.

The Department will not apply these obligation deadlines in the limited circumstance of homeless prevention activities. Because it would be difficult for a State to ascertain local homeless prevention needs within the current 65-day deadline, HUD will permit States to set aside up to 10 percent of their grant amounts for homeless prevention efforts. These set-aside funds must be made available to State recipients within *180 days* of the grant award by HUD. Thereafter, the State recipient will have *30 days* to obligate the funds for homeless prevention activities.

Other Matters. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN NOTICE—EMERGENCY SHELTER GRANTS PROGRAM

Description of information collection	Provisions of notice or final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application (annual) to HUD	§ 576.51	375	1	375	16.0	6,000
Initial report to HUD	§ 576.85(a)	375	1	375	12.0	4,500
Annual report to HUD	§ 576.85(b)	375	1	375	12.0	4,500
Environmental submission to HUD by local governments funded by HUD.	II.(5)	325	1	325	0.4	130
Environmental recordkeeping by local governments funded by HUD.	II.(5)	325	1	325	30.0	9,750
Environmental submission to States by local governments funded by States.	II.(5)	300	1	300	0.4	120
Environmental recordkeeping by local governments funded by States.	II.(5)	300	1	300	30.0	9,000
Environmental submissions from States to HUD for non-profits funded by States.	II.(5)	200	1	200	0.4	80
Environmental recordkeeping by States for nonprofits funded by States.	II.(5)	50	1	50	8.0	400
Waiver requests to HUD	§ 576.21(b)	25	1	25	4.0	100
Local government certification to States for nonprofits seeking funding from States.	II.(1)	200	1	200	0.25	50
Total burden hours					34,630.00	

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that certain provisions of this Notice may have the potential for significant impact on family formation, maintenance and general well-being within the meaning of the Order. The Notice makes available $46,500,000 for the ESG program, which authorizes HUD to make grants to States, units of general local government and private nonprofit organizations for the rehabilitation or conversion of buildings for use as emergency shelter for the homeless, for the payment of certain operating expenses, essential social service expenses, and for the newly eligible homeless prevention activities. To the extent that ESG funds are used to undertake homeless prevention activities, they will help to sustain the family as a cohesive unit by preventing displacement. While provisions of this Notice might potentially have an impact on the family, these are legislatively prescribed and HUD has exercised little or no discretion in implementing them.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that some of the provisions of this Notice implementing the 1988 McKinney Amendments have "Federalism implications" within the meaning of the Order. These include: (1) Permitting States to provide ESG funds directly to a nonprofit organization, rather than requiring that the funds be provided to a unit of local government for distribution to the nonprofit; and (2) in the case of States, applying the 20 percent limitation on essential services at the State, rather than at the local, level. However, these provisions do not need to be considered further under the Executive Order because they implement statutory requirements over which HUD has exercised little or no discretion. Additionally, section 443 of the 1988 Amendments Act provides that HUD shall apply the provisions of, and regulations and procedures under, section 104(g) of the Housing and Community Development Act of 1974 to assistance and projects under Title IV of the McKinney Act. Section 104(g) provides that the Secretary may require applicants with the legal capacity to do so to assume the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary that would apply to HUD were HUD to undertake such projects as Federal projects. HUD is announcing in this Notice that it will require States and other governmental entities with general governmental powers to assume those responsibilities. While the assumption of these responsibilities under section 104(g) is discretionary with HUD, it is authorized by and clearly the intent of section 443 of the 1988 Amendments Act. Therefore, the policy is not subject to review under Executive Order 12612.

Authority: Sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 3, 1989.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89-291 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-29

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 576

[Docket No. R-89-1434; FR-2562]

Emergency Shelter Grants Program; Cross Reference

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule; cross reference.

SUMMARY: In a Notice published elsewhere in this Part III of the **Federal Register**, HUD is announcing the availability of $46,500,000 for the Emergency Shelter Grants (ESG) program. These funds were appropriated by the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). The Notice also implements amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). Public comments received by the Department by March 10, 1989, will be used to develop a final rule for the Emergency Shelter Grants program under 24 CFR Part 576. The reader is advised to review this Notice for information on ESG grant fund availability, and for the substance of the McKinney legislative amendments.

DATES: *Comment Due Date:* March 10, 1989.

Dated: January 4, 1989.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 89-415 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-29-M

federal register

Monday
January 9, 1989

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Ch. VII

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Notice of Fund Availability and Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1893; FR-2539]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Fund Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: The purpose of the section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The assistance is in the form of rental assistance under the section 8 Housing Assistance Payments Program. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937. HUD will make the assistance available for 10 years. This program is authorized by section 441 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987).

This Notice informs the public of the availability of $45 million appropriated for the program by the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). HUD estimates that this $45 million will assist approximately 1,200 units over the 10-year period. The Notice states the requirements that will govern the use of the funds made available in Fiscal Year 1989 for use under section 441.

HUD will fund applications from public housing agencies (PHAs) which best demonstrate a need for the assistance and the ability to undertake and carry out the program. HUD will conduct a national competition to select PHAs to participate.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988) adopted additional program requirements (as discussed below under *Background*). The new law requires the Department to implement the requirements by Notice within 60 days of its enactment and by regulations within 12 months. This Notice and the provisions set forth in it are in compliance with the first half of the mandate. In order to meet the second half, the Department solicits public comment on this Notice so that the Department may promulgate a final rule within the next 12 months.

DATES: Effective Date: January 9, 1989.

Application Submission Deadline April 10, 1989.

Comments Due: March 10, 1989.

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

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502-0367. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530.

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals

I. Background

A. Legislative Authority and Applicability

On July 22, 1987, the President signed into law the Stewart B. McKinney Homeless Assistance Act (the "McKinney Act"), Pub. L. 100-77. Title IV of the McKinney Act contains a number of housing assistance provisions for HUD to administer. This Notice implements section 441 of the McKinney Act, which authorizes the section 8 Moderate Rehabilitation Assistance

Program for Single Room Occupancy Dwellings for Homeless Individuals.

The Notice also announces availability of a $45 million appropriation under the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1989 (Pub. L. 100–404, approved August 19, 1988). A prior Notice of Funding Availability was published in Fiscal Year 1988 (52 FR 38380, October 15, 1987). The requirements of today's Notice only apply to funds made available in Fiscal Year 1989 under section 441. (The Fiscal Year 1988 Notice continues in effect for the funds made available in Fiscal Year 1988 under section 441).

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (P.L. 100–628, approved November 7, 1988) (the "1988 Amendments") makes additional program changes regarding (1) the use of efficiency units, (2) a definition of "major spaces", (3) an annual adjustment of the cost limitation per unit, and (4) responsibility for environmental reviews. A discussion of these program changes is set forth below under *Summary*.

B. Summary

Under the program as originally enacted, HUD will enter into annual contributions contracts (ACCs) with public housing agencies (PHAs) in connection with the moderate rehabilitation of residential properties in which some or all of the dwelling units may not contain either food preparation or sanitary facilities. Each of thse single room occupancy (SRO) units is intended for occupancy by one eligible homeless individual.

Selection of tenants is not subject to the 15 and 30 percent limitations on the number of units that may be occupied by "other single persons" or to the preference for elderly, handicapped, or displaced single persons over other single persons (see section 3(b)(3) of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(b)(3), and the waiver of these provisions in section VIII.B. of this Notice). If, after appropriate outreach efforts by the PHA and the Owner, there are insufficient eligible homeless individuals to fill all assisted units, the Owner may rent them to eligible non-homeless individuals.

Amounts made available must be allocated by HUD on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted under that section. No single city or urban county is eligible to receive more than 10 percent of the assistance made available.

Under this program, HUD will provide assistance for a 10-year assistance period. (In Fiscal Year 1989, 10 percent of assistance made available is $4,500,000 of budget authority, which is equivalent to administratively controlled contract authority of $450,000 for each year over the 10-year assistance period.) The statutory allocation procedures established for the program by section 441 apply instead of the "fair share" allocation procedures required for most assisted housing funds by section 213(d) of the Housing and Community Development Act of 1974, 42 U.S.C. 1439(d).

Applications must contain an identification of the particular structures proposed for rehabilitation. HUD does not require competitive selection of Owners by PHAs because of the special nature of this program. A PHA which is selected will execute an ACC with HUD. The ACC shall be for a term of eleven years (thus allowing for one year to place the units under a Housing Assistance Payments Contract (HAP Contract) and a 10-year assistance period under the HAP Contract). The ACC will give HUD the option to renew the ACC for an additional 10 years, subject to the availability of appropriations.

Before the Owner begins any rehabilitation, the PHA and the Owner must enter into an Agreement to Enter into Housing Assistance Payments Contract (Agreement). After completion of rehabilitation, the PHA and the Owner will enter into a Housing Assistance Payments Contract. The HAP Contract must be entered into within 12 months of execution of the ACC and will have a 10-year term.

Under the original program, the total cost of rehabilitation that may be compensated through Contract Rents under a HAP Contract could not exceed $14,000 per SRO unit (including a pro rata share of the cost related to common areas). This limit could be adjusted in certain circumstances. (There is no limitation on the cost of rehabilitation under the regular program.) Displacement (the permanent, involuntay move of an occupant) will not be allowed under the SRO Program, as further elaborated upon in section II.D.[1]

This Notice incorporates by reference many of the regulations for the current Moderate Rehabilitation Program in 24 CFR Part 882, Subparts D and E, and refers to other regulations in Title 24. Section references to HUD regulations are to Title 24. The term "family" as used in Title 24 shall be understood to refer to an individual for purposes of this program.

The 1988 Amendments made the following changes to the SRO Program:

(1) SRO assistance may now be used in connection with the moderate rehabilitation of efficiency units, if the owner agrees to pay the additional costs of rehabilitating and operating the units. This amendment is evidenced in this Notice by permitting, under section II.B. *Housing Quality Standards*, an SRO unit that may contain both food preparation and sanitary facilities. However, in no case, may the fair market rents for SRO units be exceeded. (That fair market rent is 75 percent of the 0-bedroom Moderate Rehabilitation fair market rent.)

(2) A definition of "major spaces" is provided in connection with fire and safety improvements and is set forth to mean "hallways, large common areas, and other areas specified in local fire, building, or safety codes." This definition is contained in this Notice under section II.B. *Housing Quality Standards*.

(3) HUD is required to increase the per unit cost limit each year to take into account increases in construction costs, starting with assistance provided on or after October 1, 1988. For purposes of Fiscal Year 1989 funding, the cost limitation has been raised from $14,000 per unit to $14,300 per unit to take into account increases in construction costs during the past 12-month period. This amendment is made by changes to section III.G *Initial Contract Rents*.

(4) Under section 104(g) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304 (the "1974 Act"), funds may be released for particular projects to recipients of assistance under Title I of the 1974 Act who assume all of the responsibilities for environmental review, decisionmaking, and actions under the 1974 Act. Section 482(a) of the 1988 Amendments states that "the provisions of, and regulations and procedures applicable under, section 104(g)" of the 1974 Act shall apply to assistance and

[1] PHAs should be aware that any displacement resulting from the regular Moderate Rehabilitation Program after April 2, 1989, will be subject to the requirements of the Uniform Relocation Act (URA). The URA will cover all persons displaced by the rehabilitation project, not just those in assisted units. In other words, if the rehabilitation of an occupied 10-unit structure displaces any family, that family would be covered by the URA, whether or not the family occupied one of the units to be assisted, and regardless of the family's income. Regulations implementing the URA requirements for the regular Moderate Rehabilitation Program will be issued before April 2, 1989.

projects under Title IV of the McKinney Act. This gives HUD the discretion to apply the environmental review procedures of section 104(g) and its implementing regulations at 24 CFR Part 58 to the section 8 SRO program.

In all the programs to which section 104(g) (other than those in Title IV of the McKinney Act) applies, the recipients of assistance are jurisdictions with general purpose powers. Although a small minority of PHAs are agencies of general local government, the majority do not possess general purpose powers. The Department believes that the existence of such powers—especially powers relating to land use control—is an important element in a recipient's ability to carry out the status of a "responsible Federal official," within the meaning of section 104(g). Clearly, most PHAs do not possess these powers and would be unable to successfully carry out these environmental responsibilities.

Thus, for purpose of this Notice, the Department will provide for assumption of environmental review responsibilities by PHAs, but will carry out these functions itself. This decision applies to all PHAs, even if they possess general governmental powers. In the Department's view, the relatively small number of PHAs that have these powers does not justify operating a dual system for environmental review for the program.

In developing a final rule for this program, the Department specifically requests comments on the following alternative proposals for handling environmental reviews for this program in the future:

(a) HUD to continue to conduct the environmental reviews for all recipients under this program, or

(b) Units of general local government that operate as PHAs to assume responsibility for conducting their own environmental reviews, with HUD continuing to conduct the reviews for all other PHAs.

(5) The 1988 Amendments require Comprehensive Homeless Assistance Plans (CHAPs) to contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that the homeless facility is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. SROs under this program are homeless facilities for this purpose and, therefore, subject to CHAP requirements regarding drug- and alcohol-free facilities as set forth in Section III.4 of the CHAP Notice published on December 28, 1988 (53 FR 52600). This requirement is set forth in this Notice under Section III.B *Comprehensive Homeless Assistance Plan (CHAP)* as paragraph (3).

C. Processing Schedule

The first Notice for this program, which was published on October 15, 1987, set extremely short deadlines for the various processing stages under the program in an effort to make housing available for the homeless as soon as possible.

Experience has shown that the schedule required by the first Notice was unrealistic in many cases, especially where specific structures had not been identified. Accordingly, this Notice extends the time periods for the application and rehabilitation processes. However, applicants should ensure that their applications are prepared expeditiously: the application now requires more detailed information and evidence of commitments than were required by the first Notice and the maximum rehabilitation period is still shorter than that permitted under the regular Moderate Rehabilitation program. The Department believes that the application period provided strikes the appropriate balance between ensuring quality projects and the timely provision of assistance to homeless individuals.

II. Project Eligibility and Other Requirements

A. Eligible and Ineligible Properties

(1) Except as otherwise provided in this paragraph A, housing suitable for moderate rehabilitation, as defined in § 882.402, is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is *not* eligible for assistance under this program if it:

(a) Is, or has been within 12 months before the Owner submits a proposal to the PHA, subsidized under any Federal housing program, including the Certificate or Housing Voucher program;

(b) Is owned either by the PHA administering the ACC under this program or by an entity controlled by that PHA;

(c) Is a project with a HUD-held mortgage or is a HUD-owned project;

(d) Is assisted, or is a project for which a commitment for assistance has been entered into, under the Rental Rehabilitation program, 24 CFR Part 511; or

(e) Would require displacement of any person (see paragraph II.D.(2)).

(3) Nursing homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No section 8 assistance may be provided with respect to any unit occupied by an Owner.

B. Housing Quality Standards

Section 882.404 (including its incorporation by reference of § 882.109) shall apply to this program, except as follows:

(1) The housing quality standards in §§ 882.109(i) and 882.404(c), concerning lead-based paint, shall not apply to this program, since these SRO units will not house children under seven years of age.

(2) In addition to the performance requirements contained in § 882.109(p) concerning SRO units, a sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require shall be installed in each building. (The term "major spaces" means hallways, large common areas, and other areas specified in local fire, building, or safety codes.)

(3) Section 882.109(g), concerning shared housing, shall not apply to this program.

(4) Section 882.404(b), concerning site and neighborhood standards, shall not apply to this program, except that § 882.404(b) (1) and (2) shall apply. In addition, the site shall be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

(5) An SRO unit may contain both food preparation and sanitary facilities; however, in no case may the fair market rents for SRO units (75 percent of the 0-bedroom Moderate Rehabilitation fair market rent) be exceeded.

C. Financing

Section 882.405 shall apply to this program.

D. Temporary Relocation/Displacement

(1) *Temporary Relocation.* The following policies apply to the temporary relocation of residential tenants who are required to relocate temporarily following the date the PHA submits its application to HUD.

(a) No tenant shall be required to move temporarily from the property unless: (i) The tenant is provided adequate, advance written notice and appropriate advisory services; (ii) suitable housing is available for the temporary period; (iii) the temporary relocation period will not exceed 12

months; (iv) the tenant will receive reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs to and from the temporarily occupied housing and any increase in monthly housing costs; and (v) the tenant is provided a reasonable opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or a nearby building on the real property following completion of the rehabilitation.

(b) The PHA is responsible for assuring that all the temporary relocation requirements are met. Reasonable relocation costs incurred by the Owner for the temporary relocation of tenants to be assisted under this program are considered eligible rehabilitation costs for inclusion in the Contract Rents. (Temporary relocation costs for tenants not to be assisted under this program may not be included in the Contract Rents.) Preliminary administrative funds may be used for costs of PHA advisory services for the temporary relocation of tenants to be assisted under this program.

(2) *Displacement.* As indicated in the displacement certification (see paragraph III.C.(5)), no person (family, individual, business or nonprofit organization) shall be displaced as a direct result of acquisition, rehabilitation or demolition of the structure, whether or not the person occupies a unit assisted under the moderate rehabilitation SRO program. For the purposes of this Notice, a person is displaced if the person is required to move permanently and involuntarily. However, a person will not be considered displaced if (a) the person commences occupancy after the PHA submits the application to HUD and, before commencing occupancy, is provided adequate written notice from the Owner of the impending rehabilitiation and possible displacement; or (b) the person's tenancy is terminated for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or other good cause. (Good cause does *not* include termination because of Owner participation in this program.)

E. Other Federal Requirements

Section 882.407, Other Federal Requirements, shall apply to this program, with the additions and modifications noted below:

(1) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy, shall apply. Consistent with HUD's responsibilities under these Executive Orders and Executive Order 11625 (see § 882.407(c)(5)), the PHA and Owner shall make efforts to encourage the use of minority and women's business enterprises in connection with activities assisted under this program.

(2) If the procedures that the PHA or Owner, as appropriate, intends to use to make known the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, or national origin who may qualify for admission to the program, the PHA or Owner shall establish additional procedures that will ensure that such persons are made aware of the availability of the program. The PHA or Owner shall also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities which are accessible to handicapped persons.

(3) Notwithstanding that structures may serve designated populations of homeless persons, the PHA or Owner, as appropriate, is required, in serving a designated population, to comply with the requirements under this paragraph E relating to nondiscrimination on the basis of race, color, religon, sex, age, or national origin. Designated populations of homeless persons may include (but are not limited to) substance abusers and the chronically mentally ill. In addition, the PHA shall comply with section 504 of the Rehabilitation Act of 1973 and the regulations at 24 CFR Part 8 which prohibit discrimination against otherwise qualified individuals with handicaps solely by reason of handicap.

Single-sex facilities are allowable under the Moderate Rehabilitation SRO program, provided that the PHA determines that because of the physical limitations or configuration of the facility, consideration of personal privacy requires that the facility (or parts of the facility) be available only to members of a single sex.

(4) HUD shall comply with the Coastal Barriers Resources Act (which prohibits assistance for sites in the coastal barrier resources system identified under that Act).

(5) Projects of nine or more assisted units are subject to Davis-Bacon Act requirements regarding wage rates paid for rehabilitation work. The Department of Labor has advised that residential, rather than commercial, wage rates apply for buildings of four stories or less being rehabilitated for the homeless.

(6) In lieu of the provisions of § 882.407(b), the environmental review requirements of 24 CFR Part 50, implementing the National Environmental Policy Act and related environmental laws and authorities listed in 24 CFR § 50.4, are applicable to this program. HUD will complete environmental reviews on applications under this program before selecting PHAs. HUD may elect to eliminate a proposal from consideration where a proposal would require an Environmental Impact Statement (generally, where HUD determines that the proposal would have a significant effect on the human environment), or where the time necessary for the completion of the review process under an environmental law (e.g., the National Historic Preservation Act) for structures identified in a particular application would prevent timely completion of the selection process. If a successful PHA proposes, after selection, to enter into an Agreement with respect to a sturcture that was not identified in its application, the requirements in paragraph III.F.(10) will be followed.

III. PHA Application Process, HUD Review and Selection, ACC Execution, and Pre-Rehabilitation Activities

A. General

(1) PHAs that are currently administering a Moderate Rehabilitation Program under 24 CFR Part 882 are invited to submit applications for this program. There is no application form. Applications shall contain the information prescribed in paragraph III.C, be addressed to Lawrence Goldberger in Room 6130 at the address specified above, and be received by 5:15 p.m. Eastern Standard Time on April 10, 1989. Each PHA shall also submit a copy of the application to the appropriate HUD field office by the same deadline. HUD will reject late applications.

(2) PHAs have discretion to select proposals by Owners in accordance with their own procedures and policies, consistent with the requirements of this Notice. Accordingly, § 882.503, Obtaining Proposals from Owners; § 882.504(c) (1), (4), and (5), Selection of Proposals; and § 882.504(d) Notification of Owners, shall not apply to this program.

(3) HUD headquarters will process all applications and select the successful PHAs.

B. Comprehensive Homeless Assistance Plan (CHAP)

(1) Section 401 of the McKinney Act prohibits assistance under this program from being made available within the jurisdiction of a State, or a metropolitan city or urban county that is eligible for a formula allocation under the Emergency

Shelter Grants program established by the McKinney Act (ESG formula city or county), unless the entity has a HUD-approved CHAP. For PHAs that wish to receive funding under this program, the following rules apply. If the structure to be assisted is located *within* an ESG formula city or county, the city or county must have an approved CHAP. If the structure is located *outside* an ESG formula city or county, the State must have an approved CHAP. Since Indian tribes are not required to have approved CHAPs, the CHAP requirement does not apply to PHAs seeking funding for structures within the jurisdictions of Indian tribes. However, if an Indian tribe seeks to receive funding under this program for a project outside of its jurisdiction, it would be required to obtain a certification that its proposed activities are consistent with the CHAP for the jurisdiction in which the activities are to be located.

(2) The Department published a Notice in the **Federal Register** on August 14, 1987 (52 FR 30628) establishing requirements for CHAPs. Among other things, that Notice listed the ESG formula cities and counties and other entities that are subject to the CHAP requirements. The recently enacted reauthorization of the McKinney Act requires the annual submission of CHAPs. The Department published updated CHAP requirements on December 28, 1988 (53 FR 52600). Potential applicants under this program are encouraged to familiarize themselves with these requirements.

(3) Each CHAP must contain an assurance that each grantee, recipient, and project sponsor (as appropriate) will administer, in good faith, a policy designed to ensure that each SRO is free from the illegal use, possession, or distribution of drugs or alcohol by its beneficiaries. CHAP requirements regarding drug- and alcohol-free facilities are set forth in section III.4 of the CHAP Notice published on December 28, 1988 (53 FR 52600).

C. PHA Application

Section 441 of the McKinney Act requires that HUD allocate the amounts made available for this program on the basis of a national competition to the applicants that best demonstrate a need for the assistance and the ability to undertake and carry out a program to be assisted. Each application shall contain the following information to enable HUD to make these determinations.

(1) *Size and Characteristics of SRO Population.* The application shall include a description of the size and characteristics of the homeless population within the applicant's jurisdiction that would occupy SRO dwellings under this program, and a statement of the basis for this description, (*i.e.*, the source of the information). If the PHA intends to serve a designated population of homeless persons, such as substance abusers or the chronically mentally ill, the application should identify the designated population.

(2) *Identification of Suitable Housing Stock to Be Rehabilitated Under This Program.* (a) The application shall identify specific structures, by address (indicating city and urban county where applicable), that the PHA proposes for rehabilitation and assistance under this program, including:

(i) The total number of SRO units requested;

(ii) The total number of units in each structure;

(iii) The number of vacancies among SRO units to be assisted;

(iv) The type of rehabilitation expected; and

(v) For applications identifying more than one structure, a priority ranking of the structures in the event that the application can only be partially funded.

(b) The application shall also include a description of the interest that has been expressed by builders, developers, Owners, and others (including profit and nonprofit organizations) in participating in the program. This may include statements expressing interest in acquiring or rehabilitating structures identified in the application or information on site control, and should include a discussion of the relevant development and management experience, and the length of experience, of individuals or organizations that will participate in the program.

(c) The application shall also include a preliminary feasibility analysis for the structure identified which demonstrates that a preliminary estimate of the gross rents for the structure indicate that the project is feasible within the fair market rent limitation. The analysis should also address the structure's compliance with basic program requirements regarding eligible properties and tenants, site control, the $1,000 minimum in eligible rehabilitation work, and eligible work items.

(3) *Additional Commitments for Supportive Services.* The application shall identify any supportive services (as defined in section VII.B) which would be necessary for the population expected to be served. The availability of these services should be demonstrated by letters from the agencies (including public and private sources) providing the services. The letters should describe the services to be provided, the funding source, and the proposed period of availability. The PHA shall demonstrate that the supportive services appropriately address the needs of the homeless population to be served. The application should address whether these services will be provided in the structure or elsewhere. If elsewhere, the application should demonstrate that the services will be readily accessible to the homeless population to be served. Services are readily accessible if residents can get to the services on their own, or if transportation is provided to the site where the services are provided.

(4) *CHAP Certifications.* The application shall contain a certification that each proposed structure is consistent with the appropriate CHAP submitted in accordance with the 1989 requirements referenced in paragraph III.B. The certification shall be from the public official responsible for submitting the CHAP for the State, formula city or county, or territory and shall indicate that the proposed activities of the PHA are consistent with the CHAP. Such certification must be provided as follows:

(a) If the proposed structure is located within the boundaries of a city or urban county required to submit its own CHAP under the requirements referenced in section III.B., then a certification from the appropriate official of that jurisdiction is required; or

(b) If the proposed structure is not located within such a unit of local government, then a certification from the appropriate State official is required.

(5) *Displacement Certification.* The application shall contain a certification from the PHA that neither its proposed activities, nor the acquisition, rehabilitation or demolition activities of any Owner whose proposal is selected or considered for selection, will result in the displacement (the permanent, involuntary move) of any person (family, individual, business or nonprofit organization).

(6) *Section 213 Letter.* Section 213 of the Housing and Community Development Act of 1974 requires HUD to provide the chief executive officer of the unit of general local government an opportunity to comment on the application. Where the unit of general local government has a housing assistance plan, its comment may include an objection to HUD approval of an application for housing assistance on the grounds that the application is inconsistent with the local housing assistance plan. PHAs should encourage the chief executive officer to submit a

section 213 letter with the PHA application. (See 24 CFR Part 791 for specific requirements). Since HUD cannot approve an application until the 30-day comment period is closed, the section 213 letter should not only comment on the application and indicate that approval of the application for assistance under this Notice is consistent with the community's housing assistance plan, where applicable, but should also state that HUD may consider the letter to be the final comments, and that no additional comments will be submitted by the unit of local government.

(7) *Schedule.* The application shall contain a schedule for completion of all necessary steps through execution of the Housing Assistance Payments Contract and demonstrate that it is feasible for the PHA to meet its schedule. The schedule shall specify when the following will be completed:

(a) Inspection of units and determination of eligibility of any current residents, final feasibility analysis, detailed work write-ups, and cost estimates;

(b) Determination of initial base rents and Contract Rents;

(c) Ensuring that firm commitments of financing and identified necessary supportive services and other resources to be provided are in place;

(d) Execution of the Agreement;

(e) Start of rehabilitation activities, with an identification of any which may be affected by weather conditions and a discussion of how weather delays have been taken into account; and

(f) Execution of the Contract (must be within 12 months from execution of the ACC).

(8) *Administrative Capability and Rehabilitation Expertise.* The application shall include a description of the PHA's experience in administering the section 8 Moderate Rehabilitation Program and a description of the PHA's rehabilitation expertise.

(9) *Financing.* The application shall indicate the types of financing expected to be used, including Federal, State, or locally assisted financing programs, and describe the availability of such financing. If availale, statements from these financing sources indicating their willingness to provide financing should be submitted.

D. HUD Selection Process

(1) *Part 791.* Upon receipt of an application that does not include a section 213 letter from the chief executive officer of the unit of general local government (see paragraph III.C.(6)), HUD shall send the application to the appropriate chief executive officer in accordance with 24 CFR Part 791.

(2) *Ranking.* Before ranking applications, HUD will complete environmental reviews required under 24 CFR Part 50 on all applications. HUD may elect to eliminate a proposal from consideration where the application would require an Environmental Impact Statement, or the time necessary for the completion of the review process under an enviromental law for structures identified in a particular application would prevent timely completion of the ranking and selection process. Except for such eliminated proposals, HUD will rank all applications from PHSs administering the Moderate Rehabilitation Program that contain all items required by section C, based upon HUD's assessment of which applications have the best combination of the following:

(a) The need for assistance, as demonstrated by the PHA's analysis of the size and characteristics of the population to be served, and by the thoroughness of the analysis of the need presented; and

(b) The PHA's ability to undertake and carry out the program within the schedule proposed by the PHA, as demonstrated by:

(i) Whether the preliminary feasibility analysis demonstrates that it appears likely that the proposed structure will be feasible and meets basic program requirements;

(ii) Whether there is evidence of site control or other evidence that the site will be available for rehabilitation in accordance with the PHA's schedule;

(iii) The percentage of units proposed for assistance which are vacant (rehabilitation of vacant units generally will result in more units becomning available for the homeless; therefore, a preference will be given to applications indicating the highest percentage of vacancies);

(iv) Whether it appears feasible that the PHA and Owner will complete all steps necessary so that the Contract may be executed within 12 months of execution of the ACC;

(v) Whether the PHA has specified the resources available to provide necessary supportive services, including the strength and length of the commitments to provide those resources;

(vi) The availability of financing, both assisted and unassisted, as demonstrated by statements or commitments from lenders, with a preference for assisted financing availability; and

(vii) The PHA's experience with rehabilitation programs, including past performance in placing Moderate Rehabilitation units under Agreement and Contract, and the PHA's overall administrative capability, as evaluated by the HUD field office.

HUD shall assign a maximum of 30 points based on paragraph (a) and 70 points based on paragraph (b), with an equal maximum amount of points (10) for each element in paragraph (b).

3. *Selection of Applications.* (a) HUD will select the highest ranking applications. However, no city or urban county may have projects receiving a total of more than 10 percent of the assistance to be provided under this program ($4,500,000 in budget authority, which is the equivalent of $450,000 in administratively controlled contract authority per year, which HUD expects will fund a maximum of approximately 120 units for any one city or urban county).

(b) HUD will notify each PHA whether or not its application has been selected.

(c) Where the review and comment process required under 24 CFR Part 791 has not been completed by the time HUD is ready to make its selections, it may select one or more applications subject to completion of the process required under Part 791, if it has determined that the application is consistent with a housing assistance plan (where applicable). See, also, paragraphs III.C(6) and III.D.(1).

E. ACC Execution

(1) Before execution of the ACC, the PHA shall submit to the appropriate HUD field office the following:

(a) Equal Opportunity Housing Plan and Certification, Form HUD–920;

(b) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(c) Administrative Plan, which should include:

(i) Procedures for tenant outreach and for establishing waiting lists;

(ii) A policy governing temporary relocation; and

(iii) A mechanism to monitor the provision of supportive services.

(d) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(e) If applicable, proposed variations to the accceptability criteria of the Housing Quality Standards (see section II.B); and

(f) The fire and building code applicable to each structure.

(2) After HUD approves the PHA's application, the review and comment requirements of 24 CFR Part 791 have

been complied with, and the PHA has submitted (and HUD has approved) the items required by paragraph III.E(1), HUD and the PHA shall execute the ACC in the form prescribed by HUD. The initial term of the ACC shall be 11 years. This allows one year to rehabilitate the units and place them under a 10-year HAP Contract. The ACC will establish a separate term for the funding provided in Fiscal Year 1939 for this program. The ACC shall give HUD the option to renew the ACC for an additional 10 years.

(3) Section 882.403(a), Maximum Total ACC Commitments, shall apply to this program.

(4) Section 882.403(b), Project Account, shall apply to this program.

F. Project Development

Before execution of the Agreement, the PHA shall:

(1)(a) Inspect the structure to determine the specific work items which need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see section II.B) or other standards approved by HUD; (b) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added; (c) ensure that the Owner prepares the work write/ups and cost estimates required by § 882.504(f); and (d) determine initial base rents and Contract Rents;

(2) Assure that the Owner has selected a contractor in accordance with § 882.504(g);

(3) After the financing and a contractor are obtained, determine whether costs can be covered by initial Contract Rents, computed in accordance with section III.G; and, where a structure contains more than 50 units to be assisted, submit the base rent and Contract Rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner;

(4) Obtain firm commitments to provide necessary supportive services;

(5) Obtain firm commitments for other resources to be provided;

(6) Determine that the $1,000 minimum amount of work requirement and other requirements in § 8821.504(c) (2) and (3) are met;

(7) Determine eligibility of current tenants, and select the units to be assisted in accordance with § 882.504(e);

(8) Comply with the financing requirements in § 882.504(i);

(9) Assure compliance with all other applicable requirements of this Notice; and

(10) In the event that the PHA determine that any structure proposed in its application is infeasible, or the PHA proposes to select a different structure for any other reason, the PHA must submit the information required in III.C.(2) for the selected structure to HUD Headquarters for review and approval and to the HUD Field Office for environmental review, as required by II.E(6). HUD Headquarters will rate the proposed structure in accordance with the procedures in III.D. The proposed structure must rank at least as high as the lowest ranked application selected for funding in Fiscal Year 1989. If the PHA fails to submit a structure of such ranking, HUD may reduce the amount of annual contributions payable or reduce the funding reserved for the structure. The PHA may not proceed to Agreement execution until it is notified by HUD and all requirements for the proposed structure have been met.

G. Initial Contract Rents

Section 882.408, Initial Contract Rents (including the establishment of fair market rents for SRO units at 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent), shall apply to this program, except as follows:

(1)(a) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.408(c)(2), a 10-year loan term (instead of a 15-year loan term) shall be assumed. The exception in § 882.408(c)(2)(iii) for using the actual loan term where the total amount of the rehabilitation is less than $15,000 shall continue to apply. In addition, the cost for the rehabilitation that may be included for the purpose of calculating the amount of the initial Contract Rent for any unit shall not exceed the lower of (i) the projected costs of rehabilation, or (ii) $14,300 per unit, plus the cost of the fire and safety improvements required by section II.B.(2). HUD may, however, increase the limitation in clause (ii) by an amount HUD determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes.

(b) Where the PHA believes that high construction costs warrant an increase in the limitation in clause (a)(ii) above, the PHA shall demonstrate to HUD's satisfaction that a high average per unit amount is necessary to conduct this program and that every appropriate step has been taken to contain the amount of the rehabilitation within an average of $14,300 per unit, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(i) HUD may approve a higher per unit amount up to, but not to exceed, an amount derived by applying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) in use before April 1988, for the area to the total of the $14,300 per unit cost and the cost of the required fire and safety improvements; or

(ii) HUD may, on a structure-by-structure basis, increase the level approved in paragraph (i) to up to an amount computed by multiplying 2.4 by the total of the $14,300 average per unit cost and the cost of the required fire and safety improvements.

(2) In approving changes to initial Contract Rents during rehabilitation in accordance with § 882.408(d), the revised Contract Rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph G.(1) of this section.

(3) Where the structure contains four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1-, 2-, 3-, or 4-bedroom unit, as applicable) shall apply instead of a separate Fair Market Rent for each SRO unit. The Fair Market Rent for the structure shall be apportioned to each SRO unit.

(4) Contract Rents shall not include the costs of providing supportive services, transportation, furniture, or other non-housing costs, as determined by HUD. Also, contract rents shall not include the additional costs of rehabilitation and operating efficiency units. PHAs shall consult with HUD where it is not clear whether the cost may be covered by the Contract Rent.

IV. Agreement to Enter into Housing Assistance Payments Contract, Rehabilitation Period, and Cost Certifications

A. Rehabilitation Period

(1) *Agreement.* Before the Owner begins any rehabilitation, the PHA shall enter into an Agreement with the Owner is the form prescribed by HUD.

(2) *Timely Performance of Work.* Section 882.506(a) shall apply to this program. In addition, the Agreement shall provide that the work shall be completed and the Contract executed within 12 months of execution of the ACC. HUD may reduce the number of units or the amount of the annual contribution commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units.

(3) *Inspections.* Section 882.506(b) shall apply to this program.

(4) *Changes.* Section 882.506(c)(1) shall apply to this program. Contract Rents may only be increased in accordance with the rehabilitation cost limits in section III.G.(2) of this Notice.

(5) *List of Vacancies.* Section 882.506(d) shall apply to this program. See also, section VI.A. *Outreach to Lower Income Individuals and Appropriate Organizations; Waiting Lists.*

B. Completion of Rehabilitation

(1) *Notification of Completion.* Section 882.507(a) shall apply to this program.

(2) *Evidence of Completion.* Section 882.507(b) shall apply to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, shall not apply.

(3) *Actual Cost and Rehabilitation Loan Certifications.* Section 882.507(c) shall apply to this program, except that Contract Rents shall be established in accordance with section III.G of this Notice.

(4) *Review and Inspections.* Section 882.507(d) shall apply to this program.

(5) *Acceptance.* Section 882.507(e) shall apply to this program.

V. Housing Assistance Payments Contract

A. Time of Execution of Contract

Section 882.508(a) shall apply to this program.

B. Term of Contract

The Contract for any unit rehabilitated in accordance with this program shall be for a term of 10 years. The Contract shall give the PHA the option to renew the Contract for an additional 10 years.

C. Changes in Contract Rents from Agreement

The Contract Rents may be higher or lower than those specified in the Agreement, in accordance with section III.G.

D. Unleased Units

Section 882.508(c) shall apply to this program.

E. Contract Rents at End of Rehabilitation Loan Term

Section 882.409 shall apply to this program, except that the requirement to reduce rents shall apply on the earlier of (1) the end of the term of the rehabilitation loan, or (2) 10 years from the effective date of the Contract. Base rents for this program are determined under section III.G.

VI. Management

A. Outreach to Lower Income Individuals and Appropriate Organizations; Waiting Lists

(1) *Outreach to Lower Income Individuals and Appropriate Organizations.* Promptly after receiving the executed ACC, the PHA shall engage in outreach efforts to make known the availability of this program to homeless individuals in general, or to homeless individuals in the category for which the structure is designed. The PHA shall also ask appropriate organizations to refer homeless individuals to the PHA or to assist the PHA in locating them. Any outreach shall be made in accordance with the PHA's HUD-approved application and Administrative Plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement, and slogan.

(2) *Waiting Lists.* The PHA shall maintain a separate waiting list for all applicants (or each category of applicants) for this program. In establishing waiting lists, the PHA shall first review any of its existing waiting lists for section 8 Moderate Rehabilitation and Existing Housing (Certificate and Housing Voucher) programs and add the names of any homeless individuals on those lists to the lists for this program, where it is able to identify the individuals on those lists as homeless. The names of the individuals on the section 8 Moderate Rehabilitation and Existing Housing lists shall remain on those lists as well.

(3) *First Priority for Homeless Individuals.* Homeless individuals on a waiting list shall have a first priority for occupancy of housing rehabilitated under this program.

B. Individual Participation

(1) *Initial Determination of Individual Eligibility.* Section 882.514(a) shall apply to this program.

(2) *PHA Selection of Individuals for Participation.* Section 882.514(b) shall apply to this program, except that the PHA shall only refer Homeless Individuals.

(3) *Owner Selection of Individuals.* All vacant units under Contract shall be rented to Homeless Individuals referred by the PHA from its waiting lists. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting lists to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from homeless persons, and refer such persons to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Individual, provided that the Owner does not unlawfully discriminate. Should the Owner reject an Individual, and should the Individual believe that the Owner's rejection was the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue and may also file a complaint with HUD. If the individual requests the assistance of the PHA and if the PHA cannot resolve the complaint promptly, the PHA should advise the Individual that he or she may file a complaint with HUD.

(4) *Leasing to Non-Homeless Individuals.* When neither the PHA nor the Owner can find a sufficient number of interested applicants who are Homeless Individuals, the Owner may rent to non-homeless Eligible Individuals, in accordance with § 882.514 (a) through (c).

(5) *Briefing of Individuals.* Section 882.514(d) shall apply to this program, except that paragraph (d)(1)(vi) shall not apply.

(6) *Continued Participation of Individual When Contract Is Terminated.* Section 882.514(e) shall apply to this program, except that the PHA may issue a Housing Voucher instead of a Certificate.

(7) *Individuals Determined by the PHA To Be Ineligible.* Section 882.514(f) shall apply to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

C. Lease

(1) *Contents of Lease.* Section 882.504(j) shall apply to this program. In addition, the Lease shall limit occupancy to one Eligible Individual.

(2) *Term of Lease.* Section 882.403(d) shall apply to this program.

D. Security and Utility Deposits

Section 882.112 shall apply to this program.

E. Rent Adjustments

Section 882.410 shall apply to this program.

F. Payments for Vacancies

Section 882.411 shall apply to this program.

G. Subcontracting of Owner Services

Section 882.412 shall apply to this program.

H. Responsibility of the Individual

Section 882.412 shall apply to this program.

I. Reexamination of Individual Income

(1) *Regular Reexaminations.* The PHA shall reexamine the income of all Individuals at least once every 12 months. After consultation with the Individual and upon verification of the information, the PHA shall make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR Part 813, and determine whether only one individual is still occupying the unit. The PHA shall adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment.

(2) *Interim Reexaminations.* The Individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of Individual income and determinations as to whether only one person is occupying the unit. In addition, the second and third sentences of § 882.515(b) shall apply.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(c) shall apply to this program.

J. Overcrowded Units

If the PHA determines that anyone other than, or in addition to, the Eligible Individual is occupying an SRO unit assisted under this program, the PHA shall take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one Eligible Individual. Such action may include assisting the occupants of the unit in locating other housing, and requiring the occupants who do not have a right to occupy the unit under the Lease to move to other housing.

K. Adjustment of Utility Allowance

Section 882.510 shall apply to this program.

L. Termination of Tenancy

Section 882.511 shall apply to this program.

M. Reduction of Number of Units Covered by Contract

Section 882.512 shall apply to this program.

N. Maintenance, Operation, and Inspections

Section 882.516 shall apply to this program.

O. HUD Review of Contract Compliance

Section 882.217 shall apply to this program.

VII. Definitions

A. Section 882.402 shall apply to this program, except that:

(1) With respect to the definition of Moderate Rehabilitation, in determining compliance with the $1,000 minimum expenditure required to qualify as Moderate Rehabilitation, the cost of the repair or replacement of major building systems or components in danger of failure shall not be counted; and

(2) With respect to the definition of Single Room Occupancy (SRO) Housing, the requirement that an SRO unit must be located within a multifamily structure consisting of more than 12 units shall not apply.

B. In addition to the definitions contained in § 882.402, the following definitions shall apply to this program:

Eligible Individual ("Individual"). A lower income individual who, taking into account the supportive services available to the individual, is capable of independent living as a "Family" or "Single Person" under 24 CFR Part 812.

Homeless Individual. An individual who—

(1) Is an Eligible Individual;

(2) Lacks a fixed, regular, and adequate nighttime residence; and

(3) Has a primary nighttime residence that is—

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(b) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term "Homeless Individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Supportive Services. Services that may include outpatient health services; employment counseling; nutritional counseling; information on obtaining furniture or clothing; security arrangements necessary for the protection of residents of facilities to assist the homeless; other services essential for maintaining independent living; assistance to homeless individuals in obtaining other Federal, State, and local assistance available for such individuals, including mental health benefits, employment counseling, medical assistance, and income support assistance, such as Supplemental Security Income benefits, General Assistance, and Food Stamps; and residential supervision necessary to facilitate the adequate provision of supportive services to the residents. The term does not include major medical equipment.

VIII. Waivers

A. Authority to Waive Provisions of this Notice

Upon determination of good cause, the Assistant Secretary for Housing—Federal Housing Commissioner may, subject to statutory limtations, waive any provision of this Notice. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds.

B. Waiver of the Limitation and Preference in the Second and Third Sentences of Section 3(b)(3) of the 1937 Act

Section 8(a) of the U.S. Housing Act of 1937 authorizes HUD, in appropriate cases involving SRO housing, to waive the limitation and preference in the second and third sentences of section 3(b)(3) of that Act. The second sentence of section 3(b)(3) limits to 15 percent the number of units under the jurisdiction of any PHA which can be occupied by "other single persons" (those who do not qualify as elderly, displaced, or the remaining member of a tenant family). The third sentence requires a preference for persons who are elderly, handicapped, or displaced over other single persons.

The Department believes that waiver of the limitation and preference is appropriate for this program since many of those who will occupy this housing probably would not be subject to the 15 percent limitation and, therefore, would qualify for the preference. Therefore, in light of the administrative burden involved for the few who may be subject to the 15 percent limitation, HUD hereby waives these provisions for purposes of this program. In addition, any regulations implementing the percentage limitation or the preference shall not apply to units assisted under this Notice. The authority elsewhere in section 3(b)(3) to "increase the [15 percent] limitation described in the second sentence" to 30 percent does not apply, since the limitation in the second sentence has been waived and there is no applicable limitation in the second sentence to "increase."

IX. Significant Changes From Fiscal Year 1988 Notice

This Notice tracks for the most part the Notice published for Fiscal Year 1988. However, for the convenience of the reader, below is a listing of the significant changes which have been made and are not discussed previously under *Background.*

1. *II.B. Housing Quality Standards* has been changed to add a fifth provision that an SRO unit may contain both food preparation and sanitary facilities, but that in no case may the fair market rents for SRO units (75 percent of the 0-bedroom Moderate Rehabilitation fair market rent) be exceeded.

2. *II.D. Temporary Relocation/Displacement* has been revised to remove the reference to 24 CFR 882.406(a) regarding applicability of the Uniform Relocation Act because the Notice sets forth specific policies regarding temporary relocation and displacement as they apply to this program. These requirements are basically the same as those contained in the Fiscal Year 1988 Notice except that (a) temporary relocation may not exceed 12 months (as opposed to six months) and (b) the tenant must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or nearby building following completion of the rehabiltiation.

3. *II.E. Other Federal Requirements* has been changed to:

—Add a statement to paragraph (3) indicating that single-sex facilities are allowable under certain circumstances.

—Add a provision that Davis-Bacon Act requirements regarding wage rates paid for rehabilitation work apply to projects of nine or more assisted units, and that residential, rather than commercial, wage rates shall apply for buildings of four stories or less being rehabilitated for the homeless.

—Add a paragaph regarding the environmental review requirements that must be met before selection of successful PHAs.

4. *III.C. PHA Application* has been changed to:

—Delete from paragraph (2) the option that the PHA application may include an inventory of structures, by address, that would be available and appropriate for rehabilitation under this program, if it is not possible to identify a specific site. However, the application should now contain a priority ranking of the structures where more than one structure is identified.

—Add a paragraph (2)(c) to require that the application include a preliminary feasibility analysis of the structures identified following rehabilitation and specifying what that analysis should contain.

—Revise paragraph (3) regarding additional commitments for supportive services to require that the availability of these services should be demonstrated by letters from the agencies providing the services, and specifying what the letters should contain.

—Revise paragraph (4) regarding the CHAP certification to update those requirements. (PHA and local government certifications previously under paragraph (7) are subsumed under paragraph (4)).

—Revise paragraph (5) to make technical adjustments to the breadth of the displacement certification.

—Revise paragraph (7) regarding *Schedule* to remove from the schedule for completion a specific date for completion of the selection of the specific structure or structures to be rehabilitated. Paragraph (7)(a) now requires that the schedule include a date for completion of the determination of eligibility of any current residents. Paragraph 7(f) continues to require that the schedule specify the date for execution of the Contract, but specifies that it must be within 12 (as opposed to six) months from the execution of the ACC.

—Revise paragraph (9) regarding *Financing* to add that the application should contain, if available, statements from the financing sources indicating their willingness to provide financing.

5. *III.D. HUD Selection process* has been changed to:

—Revise paragraph (2) to require environmental reviews before ranking applications. HUD may eliminate a proposal from consideration where an Environmental Impact Statement is necessary and time does not permit.

—Delete from the ranking considerations old paragraph (2)(b)(i) regarding whether the PHA proposed specific projects for assistance or only submitted an inventory of structures that would be available and appropriate for rehabilitation. A new paragraph (i) has been added to include, in the ranking considerations, whether the preliminary feasibility analysis demonstrates a likelihood that the proposed structure will be feasible and will meet basic program requirements.

—Revise paragraph (2)(b)(iii) to provide that a preference will be given to applications indicating the highest percentage of vacancies.

—Revise paragraph (2)(b)(iv) to remove from the ranking considerations the feasibility of executing an agreement before January 4, 1988, and executing the Contract within *six* months of execution of the Agreement. (The paragraph now speaks only to whether the Contract may be executed within 12 months of execution of the ACC.)

—Revise paragraph (2)(b)(vi) [previously (2)(b)(vii)] to establish a preference for assisted financing availability under ranking considerations.

—Eliminate from the ranking considerations old paragraph (2)(b)(ix) (demonstrated capacity of the PHA to administer a rehabilitation program) and old paragraph (2)(b)(x) (overall feasibility of the proposed program).

6. *III.E. ACC Execution* has been changed to add a listing of what the Administrative plan should include: (i) Procedures for tenant outreach and for establishing a waiting list, (ii) a policy governing temporary relocation, (iii) a mechanism to monitor the provision of supportive services, and (iv) review and approval of the lease, including any special lease provisions related to special characteristics of the designated population to be served. (These four items were previously listed under *III.F. Project Development* as things the PHA had to do before execution of the Agreement.)

7. *III.F. Project Development* has been changed to:

—Revise paragraph (3) to remove reference to a January 4, 1988 deadline for execution of the Agreement to require such execution *in a timely manner.*

—Add paragraph (10) regarding selection of a different structure in the event the proposed structure is infeasible or for other reasons. The PHA must submit all of the same information for the newly selected structure, and the newly selected structure must rank at least as high as the lowest ranked application selected for funding.

8. *IV.A Rehabilitation Period* has been changed to:

—Remove from paragraph (1) reference to the January 4, 1988 deadline to enter into the Agreement.

—Revise paragraph (2) to state that the Agreement shall provide that the work be completed and the Contract executed within 12 months of execution of the *ACC,* as opposed to

six months from execution of the Agreement.

9. *VI.B. Individual Participation* has been changed to revise paragraph (3) regarding refusal of an Individual by an Owner. If the refusal is the result of unlawful discrimination, the Individual may request the assistance of the PHA in resolving the issue *and* may also file a complaint with HUD. If the PHA cannot resolve the complaint promptly, the PHA should advise the Individual that he or she may file a complaint with HUD. The PHA is no longer required to refer the Individual to the next available unit in the program.

10. *VII. Definitions* has been changed to add to the definition of "supportive services" information on obtaining furniture or clothing.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC, 20410.

Information collection requirements. The collection of information requirements contained in this Notice have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2502–0367. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN

[Notice of fund availability—Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals]

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Section 8 moderate rehabilitation program for single room occupancy dwellings for homeless individuals (2502–0367).	24 CFR Part 882.....	100	1	100	25	2,500

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this Notice do not have federalism implications and, thus, are not subject to review under the Order because the Notice merely provides, at statutory direction, housing for homeless individuals through a housing assistance mechanism that is already established between HUD, the PHA, and the Owner under the Section 8 Housing Assistance Payments Program.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this Notice does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order, because its aim is to provide single room housing for homeless individuals.

The Catalog of Federal Domestic Assistance Program number is 14.156, Lower Income Housing Assistance Program.

Authority: Secs. 401 and 441, Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77, approved July 22, 1987; sec. 485, Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 10–628, approved November 7, 1988; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 3, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–290 Filed 1–6–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 891

[Docket No. R-89-1432; FR-2539]

Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals; Cross Reference

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commisisoner, HUD.

ACTION: Proposed rule; cross-reference.

SUMMARY: In a Notice published elsewhere in this Part IV of the **Federal Register**, HUD is announcing the availability of $45 million for the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals. These funds were appropriated by the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). The Notice also implements amendments contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, approved November 7, 1988). The Notice of Fund Availability will be the basis for development of a final rule for this program, to be added to Chapter VIII of Title 24 of the Code of Federal Regulations, and therefore invites public comment on the Notice within 60 days of today's **Federal Register** publication.

DATES: *Comment due date:* March 10, 1989.

Date: January 5, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 89-416 Filed 1-6-89; 8:45 am]

BILLING CODE 4210-27-M

Federal Register

Monday
January 9, 1989

Part V

Department of Energy

10 CFR Part 1018

Referral of Debts to the Internal Revenue Service for Tax Refund Offset; Interim Rule With Request for Comments

DEPARTMENT OF ENERGY

10 CFR Part 1018

Referral of Debts to the Internal Revenue Service for Tax Refund Offset

AGENCY: Department of Energy (DOE).

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Energy, as a participant in the Federal Tax Refund Offset Program, is issuing temporary regulations to govern the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to DOE. These regulations are authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A) (the Act). Section 2653 of the Act allows DOE to collect debts by means of offset from the income tax refunds of persons owing money to DOE provided certain conditions are met. This rule amends Chapter X of Title 10 of the Code of Federal Regulations (CFR) by adding a new Part 1018. Part 1018 establishes procedures to be followed by DOE in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the DOE.

DATES: Interim rule is effective on January 9, 1989. Written comments must be received on or before February 8, 1989.

ADDRESS: Send comments to: Elizabeth E. Smedley, Controller, Department of Energy, (Mail Stop MA–3, Room 4A–139), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Carl W. Guidice, Office of the Controller, 202–586–4860 (FTS 896–4860).

SUPPLEMENTARY INFORMATION: This interim rule provides procedures for DOE to refer past-due legally enforceable debts to the IRS for offset against the income tax refunds of persons owing debts to the DOE. This rule is authorized by section 2653 of the Deficit Reduction Act of 1984. The purpose of the Act is to improve the ability of the government to collect money owed it while adding certain notice requirements and other protections applicable to the government's relationship to the debtor.

This rule implements section 2653 of the Act which directs any Federal agency that is owed a past-due legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of the Treasury at 26 CFR 301.6402–6T. Before a Federal agency may give such notice, however, it must first: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor 60 days from the date of the notification to present evidence that all or part of the debt is not past-due or legally enforceable; (3) consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. This program for tax refund offsets extends through January 10, 1994.

This rule, in accordance with IRS regulations, provides that before DOE refers a debt to Treasury (through IRS), a notice of intention (Notice of Intent) will be sent to the debtor. This Notice of Intent will inform the debtor of the amount of the debt and that unless the debt is repaid within 60 days from the date of the DOE's Notice of Intent, DOE intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor has a right, during such period, to present evidence that all or part of the debt is not past-due or legally enforceable. This rule also establishes procedures for the debtor who intends to present such evidence.

Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291. The rule is not classified as a major rule because it does not have the gross effects on the economy, States, or the public which are required to classify a rule as "major" and to warrant preparation of a formal regulatory impact analysis.

Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulation applies to private persons and does not affect any traditional State function. There are therefore no substantial direct effects requiring evaluation or assessment under E.O. 12612.

Regulatory Flexibility Act Certification

This rule does not have a significant impact on a substantial number of small entities (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

No additional information and recordkeeping requirements are imposed by this rule.

National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental impact. Therefore, preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

Public Comments

Pursuant to the Agreement between the IRS, the Financial Management Service, and the DOE regarding the DOE's participation in the Tax Refund Offset Program for 1989, the DOE is required to have promulgated regulations regarding referral of debts to IRS for tax refund offset prior to DOE's participation in the program. DOE is issuing interim final regulations to take effect today in order to fulfill that requirement. Although DOE will respond to written comments on today's notice, DOE is neither holding a hearing, nor providing an opportunity for prior comments, nor delaying the effective date for 30 days because these regulations are mostly procedural and because there are no significant issues of law or fact nor relevant substantial impacts on the Nation or large numbers of persons of which DOE could take account consistent with law. Moreover, issuance of immediately effective interim final regulations does not prejudice the due process rights of debtors and is essential in order to participate in the 1989 program given that the legislative authority was not extended until October 1988. Written comments are solicited for 30 days after publication of this document. A final document discussing any comments received and revisions required will be published in the **Federal Register** as soon as possible.

Other Matters

These procedures are being codified in the Department's regulations for general information and are pursuant to statutory requirements regarding publication of rules of procedure in the

Federal Register, 5 U.S.C. 552(a)(1)(C). However, the procedures described in the rule will be utilized before it becomes effective with respect to persons who are provided actual notice of the procedures through the notices required under the procedures. See 5 U.S.C. 552(a)(1).

List of Subjects in 10 CFR Part 1018

Administrative practice and procedure, Claims.

In consideration of the foregoing, the Department of Energy hereby proposes to amend Chapter X of Title 10 of the Code of Federal Regulations by adding a new Part 1018 as set forth below.

Issued in Washington, DC, on January 5, 1989.

Lawrence F. Davenport,

Assistant Secretary, Management and Administration.

Part 1018 is added to 10 CFR Chapter X to read as follows:

PART 1018—REFERRAL OF DEBTS TO IRS FOR TAX REFUND OFFSET

Sec.

Authority: 31 U.S.C. 3720A; Pub. L. 98-369; 98 Stat. 1153.

§ 1018.1 Purpose.

This part establishes procedures for the Department of Energy (DOE) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to DOE. It specifies the agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to DOE.

§ 1018.2 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Dapartment;

(4) With respect to which DOE has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by DOE to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which DOE has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402-6T relating to the eligibility of a debt for tax return offset have been satisfied.

§ 1018.3 Administrative charges.

In accordance with 10 CFR Part 1015, all administrative charges incurred in connection with the referral of the debts to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 1018.4 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after the DOE makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The DOE's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the DOE's Notice of Intent, DOE intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 1018.5 Review within the Department.

(a) *Notification by Debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by DOE.

(c) *Review of the evidence.* DOE will consider all available evidence related to the debt. Within 30 days, if feasible, DOE will notify the debtor whether DOE has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 1018.6 Departmental determination.

(a) Following review of the evidence, DOE will issue a written decision which will include the supporting rationale for the decision.

(b) If DOE either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If DOE cancels its original determination, the debt will not be referred to IRS.

§ 1018.7 Stay of offset.

If the debtor timely notifies the DOE that he or she is exercising the right described in § 1018.5(a) of this part and timely submits evidence in accordance with § 1018.5(b) of this part, any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

[FR Doc. 89-502 Filed 1-5-89; 5:00 pm]
BILLING CODE 6450-01-M

Federal Register

Monday
January 9, 1989

Part VI

The President

Federal Register
Vol. 54, No. 5
Monday, January 9, 1989

Presidential Documents

Title 3—

The President

Proclamation 5928 of December 27, 1988

Territorial Sea of the United States of America

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may exercise sovereignty and jurisdiction over their territorial seas.

The territorial sea of the United States is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction, a sovereignty and jurisdiction that extend to the airspace over the territorial sea, as well as to its bed and subsoil.

Extension of the territorial sea by the United States to the limits permitted by international law will advance the national security and other significant interests of the United States.

NOW, THEREFORE, I, RONALD REAGAN, by the authority vested in me as President by the Constitution of the United States of America, and in accordance with international law, do hereby proclaim the extension of the territorial sea of the United States of America, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty.

The territorial sea of the United States henceforth extends to 12 nautical miles from the baselines of the United States determined in accordance with international law.

In accordance with international law, as reflected in the applicable provisions of the 1982 United Nations Convention on the Law of the Sea, within the territorial sea of the United States, the ships of all countries enjoy the right of innocent passage and the ships and aircraft of all countries enjoy the right of transit passage through international straits.

Nothing in this Proclamation:

(a) extends or otherwise alters existing Federal or State law or any jurisdiction, rights, legal interests, or obligations derived therefrom; or

(b) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of December, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and thirteenth.

Ronald Reagan

[FR Doc. 89-515
Filed 1-6-89; 10:32 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12661 of December 27, 1988

Implementing the Omnibus Trade and Competitiveness Act of 1988 and Related International Trade Matters

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, 102 Stat. 1107) ("Omnibus Trade Act"), the Tariff Act of 1930 (Chapter 497, 46 Stat. 590, June 17, 1930), as amended ("Tariff Act"), the National Defense Authorization Act, Fiscal Year 1989 (P.L. 100-456, 102 Stat. 1918) ("Defense Authorization Act"), section 301 of Title 3 of the United States Code, and, in general, to ensure that the international trade policy of the United States shall be conducted and administered in a way that achieves the economic, foreign policy, and national security objectives of the United States and in a coordinated manner under the direction of the President, it is hereby ordered as follows:

PART I—TRADE, CUSTOMS, AND TARIFF LAWS

Section 1-101. *Accession of State Trading Regimes to the General Agreement on Tariffs and Trade.* The functions vested in the President by sections 1106(a), (b) and (d) of the Omnibus Trade Act, regarding the accession of state trading regimes to the General Agreement on Tariffs and Trade, are delegated to the United States Trade Representative.

Sec. 1-201. *Wine Barriers.* The functions vested in the President by section 1125 of the Omnibus Trade Act, regarding the updated report on barriers to wine trade, are delegated to the United States Trade Representative.

Sec. 1-301. *Steel Imports.* The functions vested in the President by section 805(d)(1) and (2) of the Trade and Tariff Act of 1984 (19 U.S.C. 2253, note), as amended by section 1322 of the Omnibus Trade Act, are delegated to the United States Trade Representative.

Sec. 1-401. *Telecommunications Trade.* The functions vested in the President by sections 1375 and 1376(e) of the Omnibus Trade Act, regarding certain telecommunications negotiations as may be ordered by the President and reports thereon to Congressional Committees, are delegated to the United States Trade Representative.

Sec. 1-501. *Uniform Fee on Imports.* The functions vested in the President by section 1428 of the Omnibus Trade Act, regarding negotiations to obtain authority under the General Agreement on Tariffs and Trade to impose a small uniform fee on imports, are delegated to the United States Trade Representative.

PART II—EXPORT ENHANCEMENT

Sec. 2-101. *Countertrade and Barter.*

(1) *Establishment.* There is established an Interagency Group on Countertrade, which shall be composed of the Secretaries of Commerce, State, Defense, Treasury, Labor, Agriculture, and Energy, the Attorney General, the Administrator of the Agency for International Development, the Director of the Federal Emergency Management Agency, the United States Trade Representative and the Director of the Office of Management and Budget, or their respective representatives. The Secretary of Commerce or his representative shall be the Chairman of the interagency group.

(2) *Functions.* The interagency group shall carry out the functions and duties set out in section 2205(a) of the Omnibus Trade Act.

Sec. 2–201. *Sanctions Against Toshiba and Kongsberg.*

(1) *Procurement Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), departments, agencies and instrumentalities of the United States Government shall not for the three-year period beginning on the date this Order takes effect, contract with or procure products and services from Toshiba Machine Company, Kongsberg Trading Company, Toshiba Corporation or Kongsberg Vaapenfabrikk. The head of each department, agency or instrumentality is hereby directed and authorized to implement this procurement sanction in accordance with paragraph (3).

(2) *Import Sanctions.* Pursuant to section 2443 of the Omnibus Trade Act and subject to the exceptions referred to in paragraph (3), importation into the United States, its territories and possessions, of products produced by Toshiba Machine Company or Kongsberg Trading Company is prohibited for three years from the effective date of this Order. The Secretary of the Treasury is hereby directed and authorized to implement this import sanction in accordance with paragraph (3).

(3) *Exceptions.* Authority to make determinations as to exceptions to sanctions and to implement exceptions by regulation or otherwise is delegated (i) to the Secretary of Defense with respect to determinations under section 2443(c)(1) regarding the procurement of defense articles or defense services, (ii) to the Secretary of the Treasury with respect to exceptions under section 2443(c)(2) regarding importation prohibited by section 2443(a)(2), and (iii) to the head of each Federal department, agency or instrumentality with respect to exceptions under section 2443(c)(2) affecting their respective contracting and procurement. All regulations implementing these exceptions provisions shall be consistent with any guidelines provided by the Office of Federal Procurement Policy, Office of Management and Budget.

(4) *Annual Report.* The annual report required by section 2445, concerning estimated increases in defense expenditures arising from illegal technology transfers, shall be prepared by the Secretary of Defense, in consultation with the Secretaries of State and Commerce, for submission to the Congress by the President.

PART III—FOREIGN CORRUPT PRACTICES AMENDMENTS; INVESTMENT; AND TECHNOLOGY

Sec. 3–101. *Foreign Corrupt Practices Act Amendments.*

The functions conferred upon the President by section 5003(d)(1) ("International Agreement") of the Omnibus Trade Act are delegated to the Secretary of State, who in performing such functions shall act in consultation with the Attorney General, the United States Trade Representative, the Chairman of the Securities and Exchange Commission, the Secretary of Commerce, the Secretary of the Treasury and the Director of the Office of Management and Budget.

Sec. 3–201. *Authority to Review Certain Mergers, Acquisitions, and Takeovers.*

(1) Executive Order No. 11858, as amended, regarding the Committee on Foreign Investment in the United States (the "Committee") is further amended as follows:

(A) By adding new Sections 7 and 8 as follows:

"**Sec. 7.** (1) *Investigations.* (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after

receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall conclude action under this section on such notice. The Chairman shall advise the President of said decision.

"(2) *Report to the President.* Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

"**Sec. 8.** The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act."

(B) By deleting, from the second sentence in Section 1(a), the text beginning with "a representative" and ending with "by each of".

(C) By deleting, from the third sentence in Section 1(a), the phrase "representative of the".

(D) By deleting "and" at the end of subparagraph (3) of Section 1(b), by substituting "; and" for the period at the end of subparagraph (4) of that Section, and by adding a new subparagraph (5) as follows: "(5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) ("Defense Production Act")."

(E) By adding the following sentence at the end of Section 5: "Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act."

(F) By inserting in Section 1(a) the following additional Committee members: "(7) The Attorney General." and "(8) The Director of the Office of Management and Budget."

(G) The Interim Presidential Directive to the Secretary of the Treasury of October 26, 1988, is hereby revoked, and any notices received or investigations pending as of the date this Order takes effect shall be referred to the Chairman of the Committee for action consistent with this Order.

Sec. 3–301. *Reporting Requirement on Semiconductors, Fiber Optics and Superconducting Materials.*

(1) The Secretary of Commerce, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and the Director of the Office of Management and Budget, shall prepare for the President to submit to the Congress with the Fiscal Year 1990 budget a report describing policies and budget proposals regarding:

(A) Federal research in semiconductors and semiconductor manufacturing technology, including a discussion of the respective roles of the various Federal departments and agencies in such research;

(B) Federal research and acquisition policies for fiber optics and optical-electronic technologies generally;

(C) Superconducting materials, including descriptions of research priorities, the scientific and technical barriers to commercialization which such research

is designed to overcome, steps taken to ensure coordination among Federal agencies conducting research on superconducting materials, and steps taken to consult with private United States industry to ensure that no unnecessary duplication of research exists and that all important scientific and technical barriers to the commercialization of superconducting materials will be addressed; and

(D) Federal research to assist United States industry to develop and apply advanced manufacturing technologies for the production of durable and nondurable goods.

(2) The Department of Defense, the Department of Energy, the National Science Foundation, the National Aeronautics and Space Administration, the Department of State, the United States Trade Representative, and other Federal agencies deemed appropriate by the Secretary of Commerce shall provide the information described in section 5141 of the Omnibus Trade Act concerning their Fiscal Year 1989 program and proposed Fiscal Year 1990 program to the Secretary of Commerce in sufficient time to permit preparation of the report.

(3) The Office of Management and Budget shall provide to the Secretary of Commerce, in sufficient time to permit preparation of the report, a summary of the Federal base program and Fiscal Year 1990 budget initiatives in each of the technical areas of the report.

(4) The Office of Science and Technology Policy ("OSTP") shall provide the Secretary of Commerce with appropriate policy guidance in the technical areas of the report, including a summary of the criteria used to select research projects within an agency and among agencies, and the results of any studies conducted by OSTP, or by others if OSTP deems them to be relevant, which analyze the influence of the Federal research programs in the technical areas of the report.

Sec. 3–401. *A National Commission on Superconductivity.*

(1) *Establishment.* There is established a National Commission on Superconductivity ("Commission"). The Commission shall consider major policy issues regarding United States applications of recent research advances in superconductors including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies.

(2) *Membership.* The membership of the Commission shall be not more than 24 individuals appointed by the President and include representatives of:

(A) The National Critical Materials Council, the National Academy of Sciences, the National Academy of Engineering, the National Science Foundation, the National Aeronautics and Space Administration, the Department of Energy, the Department of Justice, the Department of Commerce (including the National Institute of Standards and Technology), the Department of Transportation, the Department of the Treasury, the Department of Defense, and the Office of Management and Budget;

(B) Organizations whose membership is comprised of physicists, engineers, chemical scientists, or material scientists; and

(C) Industries, universities, and national laboratories engaged in superconductivity research.

(3) *Chairman.* A representative of the private sector shall be designated by the President as Chairman of the Commission.

(4) *Coordination.* The National Critical Materials Council shall be the coordinating body of the Commission and shall provide staff support for the Commission.

(5) *Report.* By February 28, 1989, the Commission shall submit a report to the President and the Congress with recommendations regarding methods of

enhancing the research, development, and implementation of improved superconductor technologies in all major applications.

(6) *Scope of Review.* In preparing the report required by subsection (5), the Commission shall consider addressing, but need not limit its review to:

(A) The state of United States competitiveness in the development of improved superconductors;

(B) Methods to improve and coordinate the collection and dissemination of research data relating to superconductivity;

(C) Methods to improve and coordinate funding of research and development of improved superconductors;

(D) Methods to improve and coordinate the development of viable commercial and military applications of improved superconductors;

(E) Foreign government activities designed to promote research, development, and commercial application of improved superconductors;

(F) The need to provide increased Federal funding of research and development of improved superconductors;

(G) The impact on the United States national security if the United States must rely on foreign producers of superconductors;

(H) The benefit, if any, of granting private companies partial exemptions from United States antitrust laws to allow them to coordinate research, development, and products containing improved superconductors;

(I) Options for providing income tax incentives for encouraging research, development, and production in the United States of products containing improved superconductors; and

(J) Methods to strengthen domestic patent and trademark laws to ensure that qualified superconductivity discoveries receive the fullest protection from infringement.

(7) *Termination.* The Commission shall disband within a year of the date of this Order. Thereafter the National Critical Materials Council may review and update the report required by subsection (5) and make further recommendations as it deems appropriate.

PART IV—EDUCATION AND TRAINING FOR AMERICAN COMPETITIVENESS

Sec. 4–101. *Buy American Act of 1988.*

(1) The functions vested in the President by section 7002 of the Omnibus Trade Act, regarding section 4(d) of Title III of the Buy American Act of 1933, as amended (41 U.S.C. 10a–10d), are delegated to the Secretary of Defense.

(2) The functions vested in the President by section 7003 of the Omnibus Trade Act, regarding the annual report required by subsection (d) of section 305 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515), are delegated to the United States Trade Representative.

PART V—MISCELLANEOUS

Sec. 5–101. *Executive Oversight.*

Any actions or determinations taken or made by an officer or agency under the Omnibus Trade Act or this Order shall be subject to the Executive oversight and direction of the President, and such actions or determinations shall be undertaken after appropriate inter-agency consultation as established by the President.

Sec. 5–102. *Regulatory Review.* Notwithstanding the provisions of section 1(a)(2) of Executive Order No. 12291 of February 17, 1981, the Director of the Office of Management and Budget shall, with regard to regulations, rules, or agency statements of general applicability and future effect designed to

implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency relative to the administration of the Export Administration Act, determine whether such regulations, rules, or agency statements are exempted from review under that Order, pursuant to the provisions of section 8(b) thereof.

Sec. 5–201. *Offsets.* The negotiating functions under section 825(c) of the Defense Authorization Act, as may be ordered by the President, are hereby jointly delegated to the Secretary of Defense and the United States Trade Representative. These functions shall be coordinated with the Secretary of State and conducted in consultation with the Secretaries of Commerce, Labor and the Treasury.

Sec. 5–202. *Reporting Functions.* The reporting functions of the President under section 825(d) of the Defense Authorization Act are delegated to the Director of the Office of Management and Budget. The Director may further delegate to the heads of Executive departments and agencies responsibility for preparing particular sections of such reports. The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Director with such information as may be necessary for the effective performance of these functions.

Sec. 5–301. *International Trade Commission Report.* The functions vested in the President by section 332(g) of the Tariff Act, regarding reports by the United States International Trade Commission to the President, are delegated to the United States Trade Representative.

Sec. 5–401. *Strengthening International Institutions.* To the extent possible, actions undertaken under this Order shall be conducted in a manner that strengthens international institutions that further United States objectives, such as opening foreign markets and preventing the export of strategic goods and technologies to proscribed destinations.

Sec. 5–501. *Effective Date.* This Order shall take effect at 12:01 a.m. on Wednesday, December 28, 1988.

Ronald Reagan

THE WHITE HOUSE,
December 27, 1988.

[FR Doc. 89-510
Filed 1-6-89; 10:33 am]
Billing code 3195-01-M

Editorial note: For a statement by the Deputy Press Secretary to the President, dated Dec. 28, on Executive Order 12661 and a list of seven members appointed to the National Commission on Superconductivity, dated Dec. 22, see the *Weekly Compilation of Presidential Documents* (vol. 24, pp. 1666 and 1653, respectively).

Presidential Documents

Executive Order 12662 of December 31, 1988

Implementing the United States-Canada Free-Trade Implementation Act

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including the United States-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449, 102 Stat. 1851) ("FTA Implementation Act"), it is hereby ordered as follows:

Section 1. *Publication of Proposed Rules regarding Technical Standards.*

(a) In accordance with Articles 601(1) and 607 of the United States-Canada Free-Trade Agreement ("Free-Trade Agreement"), each agency subject to the provisions of the Administration Procedure Act (5 U.S.C. section 551 *et seq.*) shall, in applying section 553 of Title 5 of the United States Code with respect to any proposed Federal standards-related measures or product approval procedures, publish or serve notice of such measures or procedures not less than 75 days before the comment due date, except where, in urgent circumstances, delay would frustrate the achievement of a legitimate domestic objective.

(b) For purposes of this section:

(1) "legitimate domestic objective" means an objective whose purpose is to protect health, safety, essential security, the environment, or consumer interests;

(2) "product approval" means a Federal Government declaration that a set of published criteria has been fulfilled and therefore that goods are permitted to be used in a specific manner or for a specific purpose;

(3) "standards" and "certification systems" shall be defined in accordance with the definitions for those terms set out in section 451 of the Trade Act of 1979, 19 U.S.C. section 2571; and

(4) "standards-related measures" include technical specifications, technical regulations, standards and rules for certification systems that apply to goods, and processes and production methods.

(c) This section shall not apply with respect to any proposed rules related to agricultural, food, beverage, and certain related goods as defined in Chapter Seven (Agriculture) of the Free-Trade Agreement.

Sec. 2. *Establishment of United States Secretariat.*

Pursuant to subsection 405(e) of the FTA Implementation Act, a "United States Secretariat" shall be established within the International Trade Administration of the Department of Commerce. The Secretariat shall facilitate:

(1) the operation of Chapters 18 and 19 of the Free-Trade Agreement, and

(2) the work of the binational panels and extraordinary challenge committees convened under those Chapters.

Sec. 3. *Acceptance by the President of Panel and Committee Decisions.*

In accordance with subsection 401(c) of the FTA Implementation Act, in the event that the provisions of subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. section 1516a(g)(7)(B), take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

Sec. 4. *Judicial Review.*

This Order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Sec. 5. *Effective Date.*

This Order shall take effect upon the entry into force of the Free-Trade Agreement.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1988.

[FR Doc. 89-517
Filed 1-6-89; 10:34 am]
Billing code 3195-01-M

Editorial note: For the text of a memorandum to the Secretary of State and the U.S. Trade Representative, dated Dec. 31, on the implementation of the agreement, see the *Weekly Compilation of Presidential Documents* (vol. 24, p. 1668).

Reader Aids

Federal Register

Vol 54, No. 5

Monday, January 9, 1989

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, JANUARY

CFR PARTS AFFECTED DURING JANUARY

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

Proclamations:
5928.....777
Executive Orders:
12661.....779
12662.....785
Administrative Orders:
Findings:
Dec. 31, 1988.....271

7 CFR

68.....88
301.....97
318.....387
907.....1
910.....2
998.....227
1210.....88
1250.....98
1980.....2
2003.....11

8 CFR

103.....12
212.....12
214.....12
232.....100
233.....100
235.....100
237.....100
238.....100
239.....100
274a.....12
280.....100
299.....100
Proposed Rules:
241.....154

9 CFR

327.....273
381.....273
Proposed Rules:
145.....418
147.....418

10 CFR

1018.....772
Proposed Rules:
19.....427
430.....88

12 CFR

336.....227
563.....393
Proposed Rules:
226.....227
561.....427
563.....155, 427

13 CFR

133.....102

14 CFR

39.....104, 105, 107, 595-598
71.....264
73.....260
91.....264
97.....108
107.....582
1264.....599
Proposed Rules:
39.....622, 623
71.....626

15 CFR

Ch. III.....601
Ch. VII.....601
970.....514
971.....514

16 CFR

Ch. II.....601
Proposed Rules:
13.....35

17 CFR

Proposed Rules:
230.....308, 309
240.....315

18 CFR

154.....602
157.....602
260.....602
284.....602
385.....602
388.....602

19 CFR

Proposed Rules:
201.....37

20 CFR

366.....397
Proposed Rules:
203.....318

21 CFR

103.....398
165.....398
182.....228
184.....228
522.....400
558.....109
Proposed Rules:
182.....228
184.....228
866.....550
868.....550
870.....550

872.....550
874.....550
876.....550
878.....550
880.....550
882.....550
884.....550
886.....550
888.....550
890.....550

23 CFR

625.....276

24 CFR

203.....110
234.....110
247.....230
840.....736
841.....736
882.....230
888.....230

Proposed Rules:

576.....756
840.....747
841.....747
891.....769

25 CFR

5.....282
177.....111

26 CFR

1.....16, 283
301.....400

Proposed Rules:

1.....39, 627
301.....39, 428

28 CFR

0.....296
16.....113

29 CFR

1625.....604
1952.....115

Proposed Rules:

1915.....352

30 CFR

5.....17
15.....351
756.....116
913.....118

Proposed Rules:

202.....354
206.....354
210.....354
212.....354
926.....632
936.....633

31 CFR

500.....21
565.....21

Proposed Rules:

203.....40
214.....40

32 CFR

146.....298

33 CFR

100.....23
110.....604
117.....24, 611
155.....125
162.....604
165.....604, 611

36 CFR

Proposed Rules:

7.....429

38 CFR

36.....612

Proposed Rules:

3.....733

40 CFR

52.....612
122.....246
123.....246
124.....246
125.....246
130.....246
180.....382
270.....615
403.....246
440.....25
716.....617
799.....618

Proposed Rules:

52.....41, 44, 634
180.....384
228.....44
435.....634

41 CFR

Ch. 101, Subchapter A.....28

43 CFR

Public Land Orders:

6695.....124
6696.....124
6698.....402

45 CFR

Proposed Rules:

1610.....46
1611.....48

46 CFR

1.....125
10.....125
12.....125
15.....125
26.....125
30.....125
31.....125
35.....125
151.....125
157.....125
175.....125
185.....125
186.....125
187.....125

47 CFR

0.....151
1.....402
64.....151
73.....152, 153

Proposed Rules:

2.....157
73.....159
80.....157

49 CFR

Proposed Rules:

Ch. II.....49
533.....436
661.....49

50 CFR

216.....411
611.....299
642.....153, 306
663.....299
675.....416

Proposed Rules:

17.....441, 554
602.....512
611.....32
663.....32

LIST OF PUBLIC LAWS

Note: The list of public laws enacted during the second session of the 100th Congress has been completed.

Last List November 30, 1988

The list will be resumed when bills are enacted into public law during the first session of the 101st Congress, which convened on January 3, 1989. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1–699	14.00	Jan. 1, 1988
700–1199	15.00	Jan. 1, 1988
1200–End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
0–26	15.00	Jan. 1, 1988
27–45	11.00	Jan. 1, 1988
46–51	16.00	Jan. 1, 1988
52	23.00	Jan. 1, 1988
53–209	18.00	Jan. 1, 1988
210–299	22.00	Jan. 1, 1988
300–399	11.00	Jan. 1, 1988
400–699	17.00	Jan. 1, 1988
700–899	22.00	Jan. 1, 1988
900–999	26.00	Jan. 1, 1988
1000–1059	15.00	Jan. 1, 1988
1060–1119	12.00	Jan. 1, 1988
1120–1199	11.00	Jan. 1, 1988
1200–1499	17.00	Jan. 1, 1988
1500–1899	9.50	Jan. 1, 1988
1900–1939	11.00	Jan. 1, 1988
1940–1949	21.00	Jan. 1, 1988
1950–1999	18.00	Jan. 1, 1988
2000–End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
9 Parts:		
1–199	19.00	Jan. 1, 1988
200–End	17.00	Jan. 1, 1988
10 Parts:		
0–50	18.00	Jan. 1, 1988
51–199	14.00	Jan. 1, 1988
200–399	13.00	[2] Jan. 1, 1987
400–499	13.00	Jan. 1, 1988
500–End	24.00	Jan. 1, 1988
11	10.00	July 1, 1988
12 Parts:		
1–199	11.00	Jan. 1, 1988
200–219	10.00	Jan. 1, 1988
220–299	14.00	Jan. 1, 1988
300–499	13.00	Jan. 1, 1988
500–599	18.00	Jan. 1, 1988
600–End	12.00	Jan. 1, 1988
13	20.00	Jan. 1, 1988
14 Parts:		
1–59	21.00	Jan. 1, 1988
60–139	19.00	Jan. 1, 1988
140–199	9.50	Jan. 1, 1988
200–1199	20.00	Jan. 1, 1988
1200–End	12.00	Jan. 1, 1988
15 Parts:		
0–299	10.00	Jan. 1, 1988
300–399	20.00	Jan. 1, 1988
400–End	14.00	Jan. 1, 1988
16 Parts:		
0–149	12.00	Jan. 1, 1988
150–999	13.00	Jan. 1, 1988
1000–End	19.00	Jan. 1, 1988
17 Parts:		
1–199	14.00	Apr. 1, 1988
200–239	14.00	Apr. 1, 1988
240–End	21.00	Apr. 1, 1988
18 Parts:		
1–149	15.00	Apr. 1, 1988
150–279	12.00	Apr. 1, 1988
280–399	13.00	Apr. 1, 1988
400–End	9.00	Apr. 1, 1988
19 Parts:		
1–199	27.00	Apr. 1, 1988
200–End	5.50	Apr. 1, 1988
20 Parts:		
1–399	12.00	Apr. 1, 1988
400–499	23.00	Apr. 1, 1988
500–End	25.00	Apr. 1, 1988
21 Parts:		
1–99	12.00	Apr. 1, 1988
100–169	14.00	Apr. 1, 1988
170–199	16.00	Apr. 1, 1988
200–299	5.00	Apr. 1, 1988
300–499	26.00	Apr. 1, 1988
500–599	20.00	Apr. 1, 1988
600–799	7.50	Apr. 1, 1988
800–1299	16.00	Apr. 1, 1988
1300–End	6.00	Apr. 1, 1988
22 Parts:		
1–299	20.00	Apr. 1, 1988
300–End	13.00	Apr. 1, 1988
23	16.00	Apr. 1, 1988
24 Parts:		
0–199	15.00	Apr. 1, 1988
200–499	26.00	Apr. 1, 1988
500–699	9.50	Apr. 1, 1988
700–1699	19.00	Apr. 1, 1988
1700–End	15.00	Apr. 1, 1988
25	24.00	Apr. 1, 1988
26 Parts:		
§§ 1.0-1–1.60	13.00	Apr. 1, 1988
§§ 1.61–1.169	23.00	Apr. 1, 1988
§§ 1.170–1.300	17.00	Apr. 1, 1988
§§ 1.301–1.400	14.00	Apr. 1, 1988
§§ 1.401–1.500	24.00	Apr. 1, 1988
§§ 1.501–1.640	15.00	Apr. 1, 1988
§§ 1.641–1.850	17.00	Apr. 1, 1988
§§ 1.851–1.1000	28.00	Apr. 1, 1988
§§ 1.1001–1.1400	16.00	Apr. 1, 1988
§§ 1.1401–End	21.00	Apr. 1, 1988
2–29	19.00	Apr. 1, 1988
30–39	14.00	Apr. 1, 1988
40–49	13.00	Apr. 1, 1988
50–299	15.00	Apr. 1, 1988
300–499	15.00	Apr. 1, 1988
500–599	8.00	[3] Apr. 1, 1980
600–End	6.00	Apr. 1, 1988
27 Parts:		
1–199	23.00	Apr. 1, 1988
200–End	13.00	Apr. 1, 1988
28	25.00	July 1, 1988

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1988
100–499	6.50	July 1, 1988
500–899	24.00	July 1, 1987
900–1899	11.00	July 1, 1988
1900–1910	29.00	July 1, 1988
1911–1925	8.50	July 1, 1988
1926	10.00	July 1, 1988
1927–End	23.00	July 1, 1987
30 Parts:		
0–199	20.00	July 1, 1988
200–699	12.00	July 1, 1988
700–End	18.00	July 1, 1988
31 Parts:		
0–199	13.00	July 1, 1988
200–End	16.00	July 1, 1987
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	20.00	July 1, 1987
190–399	23.00	July 1, 1987
400–629	21.00	July 1, 1987
630–699	13.00	[5] July 1, 1986
700–799	15.00	July 1, 1988
800–End	16.00	July 1, 1988
33 Parts:		
1–199	27.00	July 1, 1988
200–End	19.00	July 1, 1987
34 Parts:		
1–299	20.00	July 1, 1987
*300–399	12.00	July 1, 1988
400–End	23.00	July 1, 1987
35	9.50	July 1, 1988
36 Parts:		
1–199	12.00	July 1, 1988
200–End	20.00	July 1, 1988
37	13.00	July 1, 1988
38 Parts:		
0–17	21.00	July 1, 1987
18–End	19.00	July 1, 1988
39	13.00	July 1, 1988
40 Parts:		
1–51	21.00	July 1, 1987
52	26.00	July 1, 1987
53–60	24.00	July 1, 1987
61–80	12.00	July 1, 1988
81–99	25.00	July 1, 1987
100–149	23.00	July 1, 1987
150–189	18.00	July 1, 1987
190–299	24.00	July 1, 1988
300–399	8.50	July 1,1988
400–424	21.00	July 1, 1988
425–699	21.00	July 1, 1988
700–End	27.00	July 1, 1987
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	10.00	July 1, 1988
101	23.00	July 1, 1987
102–200	12.00	July 1, 1988
201–End	8.50	July 1, 1987

Title	Price	Revision Date
42 Parts:		
1–60	15.00	Oct. 1, 1987
61–399	5.50	Oct. 1, 1987
400–429	21.00	Oct. 1, 1987
430–End	14.00	Oct. 1, 1987
43 Parts:		
1–999	15.00	Oct. 1, 1987
1000–3999	24.00	Oct. 1, 1987
4000–End	11.00	Oct. 1, 1987
44	18.00	Oct. 1, 1987
45 Parts:		
1–199	14.00	Oct. 1, 1987
200–499	9.00	Oct. 1, 1987
500–1199	18.00	Oct. 1, 1987
1200–End	14.00	Oct. 1, 1987
46 Parts:		
1–40	13.00	Oct. 1, 1987
41–69	13.00	Oct. 1, 1987
70–89	7.00	Oct. 1, 1987
90–139	12.00	Oct. 1, 1987
140–155	12.00	Oct. 1, 1987
156–165	14.00	Oct. 1, 1987
166–199	13.00	Oct. 1, 1987
200–499	19.00	Oct. 1, 1987
500–End	10.00	Oct. 1, 1987
47 Parts:		
0–19	17.00	Oct. 1, 1987
20–39	21.00	Oct. 1, 1987
40–69	10.00	Oct. 1, 1987
70–79	17.00	Oct. 1, 1987
80–End	20.00	Oct. 1, 1987
48 Chapters:		
1 (Parts 1–51)	26.00	Oct. 1, 1987
1 (Parts 52–99)	16.00	Oct. 1, 1987
2 (Parts 201–251)	17.00	Oct. 1, 1987
2 (Parts 252–299)	15.00	Oct. 1, 1987
3–6	17.00	Oct. 1, 1987
7–14	24.00	Oct. 1, 1987
15–End	23.00	Oct. 1, 1987
49 Parts:		
1–99	10.00	Oct. 1, 1987
100–177	25.00	Oct. 1, 1987
178–199	19.00	Oct. 1, 1987
200–399	17.00	Oct. 1, 1987
400–999	22.00	Oct. 1, 1987
1000–1199	17.00	Oct. 1, 1987
1200–End	18.00	Oct. 1, 1987
50 Parts:		
1–199	16.00	Oct. 1, 1987
200–599	12.00	Oct. 1, 1987
600–End	14.00	Oct. 1, 1987
CFR Index and Findings Aids	28.00	Jan. 1, 1988
Complete 1989 CFR set	620.00	1989
Microfiche CFR Edition:		
Complete set (one-time mailing)	125.00	1984
Complete set (one-time mailing)	115.00	1985
Subscription (mailed as issued)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989
Individual copies	2.00	1989

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.