

2-16-89
Vol. 54 No. 31
Pages 7029-7170

Federal Register

Thursday
February 16, 1989

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



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

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

The **Federal Register** will be furnished by mail to subscribers for \$340 per year in paper form; \$195 per year in microfiche form; or \$37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is \$1.50 for each issue, or \$1.50 for each group of pages as actually bound, or \$175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** February 28, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

AUSTIN, TX

- WHEN:** February 22, at 9:00 a.m.
- WHERE:** Lyndon Baines Johnson Library
8th Floor, 2313 Red River
Street, Austin, TX
- RESERVATIONS:** Call the Houston Federal
Information Center:
Austin: 512-472-5494
San Antonio: 512-224-4471
Houston: 713-229-2552

Contents

Federal Register

Vol. 54, No. 31

Thursday, February 16, 1989

Agriculture Department

See Forest Service

Air Force Department

NOTICES

Environmental statements; availability, etc.:
Cypress Military Operations Area, FL, 7084

Alcohol, Tobacco and Firearms Bureau

RULES

Alcoholic beverages:
Alcoholic Beverages Labeling Act of 1988; health warning statement, 7160

PROPOSED RULES

Alcoholic beverages:
Alcoholic Beverage Labeling Act of 1988; health warning statement; cross reference, 7164

Army Department

See also Engineers Corps

NOTICES

Meetings:
Science Board, 7085
(2 documents)

Centers for Disease Control

NOTICES

Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS)—
Minority and other community-based organizations;
prevention projects; correction, 7099

Central Intelligence Agency

PROPOSED RULES

Nondiscrimination on basis of handicap in federally-conducted programs and activities, 7056

Coast Guard

RULES

Drawbridge operations:
Florida, 7032

Commerce Department

See Export Administration Bureau; National Institute of Standards and Technology

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles:
Thailand, 7083
Textile consultation; review of trade:
Thailand, 7083

Customs Service

NOTICES

Trade name recordation applications:
Duart Industries, Ltd., 7127

Defense Department

See also Air Force Department; Army Department;
Engineers Corps; Navy Department

RULES

Organization, functions, and authority delegations:
Assistant Secretary of Defense (Program Analysis and Evaluation), 7031

NOTICES

Meetings:
Science Board task forces, 7084
(3 documents)

Economic Regulatory Administration

NOTICES

Consent orders:
DeMenno-Kerdoon, 7087

Education Department

RULES

Agency employees; indemnification, 7148

NOTICES

Grants and cooperative agreements; availability, etc.:
Rehabilitation training projects
Funding priorities, 7152
Special projects and demonstrations for 1989 and 1990
FY's
Funding priorities, 7156

Energy Department

See also Economic Regulatory Administration; Energy Research Office; Federal Energy Regulatory Commission

NOTICES

Grants and cooperative agreement awards:
Electrochemical Technology Corp., 7086
Meetings:
Nuclear Facility Safety Advisory Committee, 7086

Energy Research Office

NOTICES

Meetings:
Magnetic Fusion Advisory Committee, 7087

Engineers Corps

RULES

Danger zones and restricted areas:
Key West Harbor, FL, 7033
Thames River, CT, 7033

PROPOSED RULES

Danger zones and restricted areas:
Behm Canal near Ketchikan, AK, 7065

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:
Nebraska, 7034

Waste management, solid:
Hazardous waste generators; standards, 7036

PROPOSED RULES

Acquisition regulations:
Offerors; general financial and organizational information and purchasing system information; submission requirements, 7072

Air quality implementation plans; approval and promulgation; various States:

Florida, 7068

Mississippi, 7069

NOTICES

Air programs:

Diesel engine in rail, marine, construction, farm, and other mobile off-highway equipment; emission control feasibility and cost-effectiveness; draft, 7092

Air quality; prevention of significant deterioration (PSD):

Permit determinations, etc.:—

Region VI, 7092

Superfund; response and remedial actions, proposed settlements, etc.:

Middlesboro Rehabilitation Center, KY, 7093

Toxic and hazardous substances control:

Chemical testing—

Data receipt, 7093

Premanufacture exemption approvals, 7094

Water pollution control:

Clean Water Act—

Class I and II administrative penalty assessments, 7094

Executive Office of the President

See Central Intelligence Agency; President's Commission on Federal Ethics Law Reform

Export Administration Bureau

NOTICES

Meetings:

Automated Manufacturing Equipment Technical Advisory Committee, 7082

Farm Credit Administration

RULES

Farm credit system:

Funding and fiscal affairs—

Capitalization bylaws, issuance and retirement equities, etc.; correction, 7029

Federal Energy Regulatory Commission

NOTICES

Environmental statements; availability, etc.:

Graeagle Land & Water Co., 7088

Hydroelectric applications, 7088

Preliminary permits surrender:

Fall Creek Associates, 7090

Small power production and cogeneration facilities; qualifying status:

CIBRO Petroleum Products, Inc., 7091

Tropicana Products, Inc., 7091

Applications, hearings, determinations, etc.:

Puget Sound Power & Light Co., 7091

Southern Natural Gas Co., 7090

Tacoma, WA, 7090

Federal Home Loan Bank Board

NOTICES

Federal Savings and Loan Insurance Corporation:

Insolvent insured institutions; authority to appoint conservator, 7095

Federal Maritime Commission

NOTICES

Casualty and nonperformance certificates

Pride Cruise Lines, Ltd./Carter-Green-Redd Inc., 7096

Federal Reserve System

NOTICES

Applications, hearings, determinations, etc.:

Citicorp, 7096

Phenix-Girard Bancshares, Inc., et al., 7096

United Saver's Bancorp, Inc., 7097

Federal Trade Commission

PROPOSED RULES

Franchising and business opportunity ventures; disclosure requirements and prohibitions:

Earnings claim and preemption requirements, 7041

Food and Drug Administration

PROPOSED RULES

Biological products:

Measles virus vaccine live, mumps virus vaccine live, rubella virus vaccine live, and measles live and small pox vaccines

Correction, 7130

NOTICES

Human drugs:

Export applications—

Cyclopentolate ophthalmic solution, 1%, 7099

Tropicamide ophthalmic solution, 1%, 7099

Orphan drug products—

Designations; cumulative listing, 7100

Patent extension; regulatory review period determinations—

Voltaren; correction, 7130

Meetings:

Federation of American Societies for Experimental Biology, 7108

Forest Service

NOTICES

Environmental statements; availability, etc.:

Shasta-Trinity National Forests, CA, 7074

Land and resource management planning schedules, 7075

Health and Human Services Department

See also Centers for Disease Control; Food and Drug

Administration; Health Resources and Services

Administration; Human Development Services Office;

National Institutes of Health; Public Health Service

NOTICES

Poverty income guidelines; annual revision, 7097

Health Resources and Services Administration

See also Public Health Service

NOTICES

Meetings; advisory committees:

March, 7108

Human Development Services Office

NOTICES

Agency information collection activities under OMB review, 7109

(2 documents)

Interior Department

See Land Management Bureau

Internal Revenue Service

NOTICES

Senior Executive Service:

Performance Review Board; membership, 7127

Interstate Commerce Commission**NOTICES**

Agency information collection activities under OMB review, 7111

Motor carriers; control, purchase, and tariff filing exemptions, etc.:

Asbury Park Transit Lines, Inc., 7112

Railroad services abandonment:

Chicago & North Western Transportation Co., 7112

Missouri Pacific Railroad Co., 7112

Union Pacific Railroad Co., 7113

Judicial Conference of the United States**NOTICES**

Meetings:

Judicial Conference Advisory Committee on Bankruptcy Rules, 7113

Justice Department

See also Juvenile Justice and Delinquency Prevention Office

NOTICES

Organization, functions, and authority delegations:

Undercover Operations Review Committee members, 7113

Pollution control; consent judgments:

Modern Plating Corp., 7113

Juvenile Justice and Delinquency Prevention Office**NOTICES**

Grants and cooperative agreements; availability, etc.:

Juveniles taken into custody research program, 7142

Land Management Bureau**NOTICES**

Land and resource management planning schedules, 7075

Oil and gas leases:

Wyoming, 7110

Realty actions; sales, leases, etc.:

California, 7111

Nevada, 7111

National Aeronautics and Space Administration**RULES**

Acquisition regulations:

Space station; cross waiver of liability clause in contracts, 7037

National Credit Union Administration**NOTICES**

Agency information collection activities under OMB review, 7114

National Economic Commission**NOTICES**

Meetings, 7114

National Institute for Occupational Safety and Health

See Centers for Disease Control

National Institute of Standards and Technology**NOTICES**

Meetings:

Computer System Security and Privacy Advisory Board, 7082

National Institutes of Health**NOTICES**

Meetings:

National Heart, Lung, and Blood Institute, 7109

National Institute of Diabetes and Digestive and Kidney Diseases, 7109

National Library of Medicine, 7110

National Science Foundation**RULES**

Antarctic animals and plants, conservation:

Tourism guidelines; enforcement and hearing procedures, 7132

PROPOSED RULES

Antarctic animals and plants, conservation:

Special scientific interest sites; designation, 7071

NOTICES

Meetings:

DOE/NSF Nuclear Science Advisory Committee, 7115

National Transportation Safety Board**NOTICES**

Meetings; Sunshine Act, 7129

Navy Department**NOTICES**

Meetings:

Chief of Naval Operations Executive Panel Advisory Committee, 7085, 7086
(3 documents)

Nuclear Regulatory Commission**NOTICES**

Meetings:

Reactor Safeguards Advisory Committee, 7115

Applications, hearings, determinations, etc.:

Gulf States Utilities Co.; correction, 7115

Public Service Electric & Gas Co., 7115

Pacific Northwest Electric Power and Conservation Planning Council**NOTICES**

Power plan amendments:

Columbia River Basin fish and wildlife program, 7116

Personnel Management Office**PROPOSED RULES**

Health benefits, Federal employees:

Plans or carriers; circumstances for withdrawing approval, 7039

President's Commission on Federal Ethics Law Reform**NOTICES**

Meetings, 7116

Public Health Service

See also Centers for Disease Control; Food and Drug

Administration; Health Resources and Services

Administration; National Institutes of Health

NOTICES

Meetings:

National Vaccine Advisory Committee, 7110

Railroad Retirement Board**PROPOSED RULES**

Railroad Retirement Act:

Claimant evidence required for payment, 7045

Research and Special Programs Administration**NOTICES**

Hazardous materials:

Applications; exemptions, renewals, etc., 7123, 7124
(2 documents)

Securities and Exchange Commission**NOTICES**

Meetings; Sunshine Act, 7129

Self-regulatory organizations; proposed rule changes:

Philadelphia Stock Exchange, Inc., 7117

Applications, hearings, determinations, etc.:

First Pacific Mutual Fund, Inc., et al., 7118

Guardian U.S. Government Trust et al., 7120

Public utility holding company filings, 7121

Small Business Administration**RULES**

Small business size standards:

Shipbuilding and ship repair; segmentation of industry category, 7029

State Department**RULES**

Visas; immigrant documentation:

"Under-represented countries" natives; 10,000 visas issuance, 7166

NOTICES

Meetings:

International Telegraph and Telephone Consultative Committee, 7122

Shipping Coordinating Committee, 7122

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile Agreements

Transportation Department

See Coast Guard; Research and Special Programs Administration

Treasury Department

See Alcohol, Tobacco and Firearms Bureau; Customs Service; Internal Revenue Service

Veterans Administration**PROPOSED RULES**

Disabilities rating schedule:

Combined ratings table procedure usage, 7067

Separate Parts In This Issue**Part II**

National Science Foundation, 7132

Part III

Department of Justice, Juvenile Justice and Delinquency Prevention Office, 7142

Part IV

Department of Education, 7148

Part V

Department of Education, 7152

Part VI

Department of Education, 7156

Part VII

Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 7160

Part VIII

Department of State, 7166

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.

5 CFR**Proposed Rules:**

890..... 7039

12 CFR

615..... 7029

13 CFR

121..... 7029

16 CFR**Proposed Rules:**

436..... 7041

20 CFR**Proposed Rules:**

219..... 7045

21 CFR**Proposed Rules:**

630..... 7130

22 CFR

44..... 7166

27 CFR

4..... 7160

5..... 7160

7..... 7160

16..... 7160

Proposed Rules:

4..... 7164

5..... 7164

7..... 7164

16..... 7164

32 CFR

366..... 7031

Proposed Rules:

1904..... 7056

33 CFR

117..... 7032

334 (2 documents)..... 7033

Proposed Rules:

334..... 7065

34 CFR

60..... 7148

38 CFR

4..... 7067

40 CFR

52..... 7034

262..... 7036

Proposed Rules:

52 (2 documents)..... 7068,

7069

45 CFR

670..... 7132

Proposed Rules:

670..... 7071

48 CFR

1828..... 7037

1852..... 7037

Proposed Rules:

1515..... 7072

1552..... 7072

Rules and Regulations

Federal Register

Vol. 54, No. 31

Thursday, February 16, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) is correcting errors that appeared in the final rule which amended the regulation relating to the capitalization of Farm Credit System banks and associations. The final rule appeared in the Federal Register on October 13, 1988 (53 FR 40033).

EFFECTIVE DATE: February 9, 1989.

FOR FURTHER INFORMATION CONTACT:

William G. Dunn, Chief, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4402, or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD 883-4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the Federal Register, the amendatory language instructions were incorrectly stated in Subpart I and Subpart J.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS AND FUNDING OPERATIONS

1. On page 40046, first column, amendatory instruction number 3 is correctly revised to read as follows:

Subpart I—Issuance of Equities

3. Section 615.5250 in Subpart J is removed and Subpart I is revised to read as follows:

2. On page 40047, third column, the amendatory instruction is correctly revised to read as follows:

Subpart J—Retirement of Equities

3. Subpart J is amended by removing §§ 615.5255, 615.5320 and 615.5325 and by revising §§ 615.5260, 615.5270 and 615.5280.

Date: February 13, 1989.

Michael A. Bronson,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 89-3715 Filed 2-15-89; 8:45 am]

BILLING CODE 6705-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Segmentation of the Industry Category of Shipbuilding and Ship Repair

AGENCY: Small Business Administration.

ACTION: Emergency final rule.

SUMMARY: The Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, requires the Small Business Administration (SBA) to segment the industry category of shipbuilding and ship repair (Standard Industrial Classification code 3731) as follows:

- (1) Nuclear shipbuilding and ship repair;
- (2) Nonnuclear Shipbuilding, and
- (3) Nonnuclear ship repair, which shall be further segmented by, at least, east coast and west coast facilities.

This rule implements this requirement by defining each segment of the shipbuilding and ship repair industry and by identifying each segment with its own distinct size standard of 1,000 employees.

DATES: Effective February 16, 1989. Comments April 17, 1989.

ADDRESSES: Send Comments to: Gary M. Jackson, Director Size Standards Staff, U.S. Small Business Administration, 1441 L Street, NW., Rm. 601, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert Ray, (202) 653-6373.

SUPPLEMENTARY INFORMATION: Title VII of the "Business Opportunity Development Reform Act of 1988" (Pub. L. 100-656) establishes a Small Business Competitiveness Demonstration Program to provide for the testing of various procurement methods and procedures. Four designated industry groups were selected for the purpose of participation in this test program. These four groups include:

- (1) Construction (excluding dredging)
- (2) Refuse Systems and Related Services
- (3) Architectural and Engineering Services (including Surveying and Mapping Services), and
- (4) Nonnuclear Ship Repair.

Nine Federal agencies were selected to participate in this test program. For the nine Federal agencies participating in the program, additional recordkeeping requirements are imposed for monitoring contracting in these four designated industry groups. Moreover, the decisions of the nine agencies relating to small business set-aside procurement in these four industry groups are to be regulated by the program. The test program begins January 1, 1989 and continues through December 31, 1992.

With regard to the shipbuilding and ship repair industry (Standard Industrial Classification (SIC) code 3731), the legislation requires that nonnuclear ship repair participate in the program, while other categories of shipbuilding and ship repair in SIC code 3731 are not included in the program. However, pursuant to section 741 of the Act, SBA is also directed to segment the entire industry of SIC code 3731 into component industry groups as follows:

- (1) Nuclear shipbuilding and ship repair;
- (2) Nonnuclear Shipbuilding, and
- (3) Nonnuclear ship repair, which shall be further segmented by, at least, east coast and west coast facilities.

The requirement that SBA segment the industry according to various criteria raises two sets of issues which are addressed in this rule. First, SBA must define certain terms such as nuclear ship, nonnuclear ship, and what activities are included within ship repair. SBA must also determine geographical segmentation of ship repair facilities. Second, SBA must determine whether or not the present size standard of 1,000 employees for all of shipbuilding and ship repair should be continued for each segmented industry group.

Definitions

The SBA interprets the terms "nuclear and nonnuclear" to refer to the mode of propulsion of the ship in question. Within shipbuilding and ship repair, more specialized capital equipment and labor skills are utilized in building a nuclear powered ship than are found throughout the industry for nonnuclear powered ships. In addition, shipyards building nuclear powered ships or repairing the nuclear propulsion components of a ship must be certified to perform this work. This supports segmenting work on nuclear and nonnuclear ships by the mode of propulsion. Thus, any repair work on a ship which is either nonpropelled (barges, drilling platforms, etc.) or propelled by fossil fuels would be included in the category of nonnuclear ship repair. Any repair work on a ship propelled by nuclear power would be classified in the category of nuclear ship repair.

The segmentation of shipbuilding and ship repair adopts the definitions established by the Standard Industrial Classification. This classification is used by the U.S. Bureau of Census to collect and publish data on shipbuilding and ship repair. Ship repair includes repair of existing ships as well as conversions and reconversions. This also includes work commonly referred to as overhauls, alterations and the like. Shipbuilding involves the construction of new ships.

In regard to the geographical subdivision of work for nonnuclear ship repair which is a feature of the test program, SBA is adopting an east and west coast division with the demarcation determined by the 108° meridian. This segmentation is selected because virtually all river and lake systems in the United States lie either entirely east or west of the meridian and thus ship repair facilities located along inland waterways will be classified easily into either the east or west coast for purposes of complying with data collection requirements of the Act.

This geographical segmentation for nonnuclear ship repair satisfies the statutory requirement of section 741 of Pub. L. 100-656.

Further geographical segmentation may be developed for nonnuclear ship repair at a later date if supported by the prerequisites for geographical segmentation specified in section 15(a)(3) of the Small Business Act. SBA had previously considered and rejected a more detailed geographical segmentation of nonnuclear ship repair, as not satisfying the required

prerequisites (see 52 FR 8261 and 52 FR 47937). Consequently, geographical segmentation of nonnuclear ship repair is limited to the statutorily required segmentation by east and west coast ship repair facilities.

The Size Standard Issue

At present all shipbuilding and ship repair activity is included in SIC code 3731 with a 1,000-employee size standard. Section 732 of the Business Opportunity Development Act states that any numerical size standard that pertains to any of the designated industry groups that is in effect on September 30, 1988 shall remain in effect for the duration of the program. Since nonnuclear ship repair is one of the designated industry groups, its size standard of 1,000 employees will not be changed by the SBA while the program exists. However, the SBA could revise the 1,000 employee size standard as it applies to the balance of the shipbuilding and ship repair industry, while the program is in effect. Therefore, SBA invites comments as to the appropriateness of the 1,000-employee size standard as it applies to these industries.

SBA's procedures for segmentation of an industry require a separate identification of each segmented industry group as well as a distinct size standard. It does not, however, require a different size standard for each segmented industry group. In the case of the various components of the shipbuilding and ship repair industry, data are not readily available which would be unique to each of the various components of the industry. Furthermore, no geographical data are readily available for the nonnuclear ship repair component of the industry for the east coast and west coast. The unavailability of current data would make any distinctions in size standards among the various component industries unsupportable, and thus SBA is choosing to retain a size standard of 1,000 employees for each segment of the shipbuilding and ship repair industry at this time.

Compliance With Regulatory Flexibility Act, Executive Orders 12291 and 12612 and the Paperwork Reduction Act

SBA certifies that this emergency final rule is not a major rule within the meaning of Executive Order 12291. These segmented size standards are established to facilitate the implementation of criteria relating to the shipbuilding and ship repair industry as stated in the Business Opportunity Reform Act of 1988 (Pub. L. 100-656). As

directed by Congress, this rule has segmented the shipbuilding and ship repair industry into the components of: (1) Nuclear shipbuilding and ship repair, (2) nonnuclear shipbuilding (3) nonnuclear ship repair, east coast, and (4) nonnuclear ship repair, west coast.

The size standard of 1,000 employees which formerly applied to the entire industry now applies without exception to each of the components. Consequently, this rule will not have an annual economic effect exceeding \$100 million since the small business status of every firm in the industry remains unchanged. For the same reason, this regulation is not likely to result in a major increase in costs or prices or have a significant adverse effect on the United States economy.

The SBA has also clarified certain concepts first stated in the Business Opportunity Development Reform Act of 1988. These concepts, which include a definition of nuclear and nonnuclear ships and an explicit geographic separation of the nonnuclear ship repair category based on the 108° meridian clarifies language incorporated in the Act, but does not change the size status of any firm.

This rule is published as an emergency final rule since a segmentation of the shipbuilding and ship repair industry is required for purposes of the test program beginning on January 1, 1989. Several agencies participating in the test program contract for nonnuclear ship repair services and need a definition of this activity. The Act establishing the test program was signed by the President on November 15, 1988. Since the statutorily required implementation date was only 6 weeks after the Act was signed, a notice of proposed rulemaking for purposes of obtaining public comment was not practicable. However, SBA will consider any comments submitted concerning this rule and, if these comments show reason to change these standards, will promulgate regulations at a later date.

SBA also certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This rule, as described above, segments the shipbuilding and ship repair industry into several components for the purposes of collecting data on Federal procurements. The small business status of firms in the industry does not change since the small business size standard remains at 1,000 employees. Accordingly, a Regulatory Flexibility Analysis is not required for this rule.

SBA also certifies that this final rule would not have Federalism implications warranting the preparation of a Federalism assessment in accordance with Executive Order 12612. Also, this rule imposes no new reporting or recordkeeping requirements on businesses under the Paperwork Reduction Act 44, U.S.C., Chapter 35.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

Accordingly, Part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR is revised to read as follows:

Authority: Secs. 3(a) and 5(b) (6) of the Small Business Act, as amended, 15 U.S.C., 632(a) and 634(b) (6), and Public Laws 99-591, 99-661, and 100-656.

§ 121.2 [Amended]

2. In § 121.2(d) (2), Table 2, "Major Group 37—Transportation" SIC code 3731 is revised to read as follows:

SIC	Description	Size standards in number of employees or millions of dollars
(* = New SIC code in 1987, not used in 1972)	(N.E.C. = Not elsewhere classified)	
3731	Shipbuilding and Repair of Nuclear Propelled Ships	1,000
	Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian	1,000
	Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian	1,000

James Abdnor,
Administrator U.S. Small Business
Administration.

Date: January 30, 1989.

[FR Doc. 89-3436 Filed 2-15-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 366

[DoD Directive 5141.1]

Assistant Secretary of Defense (Program Analysis and Evaluation); Authority Delegation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR Part 366 in order to: Reflect elevation of the Director, Program Analysis and Evaluation (DPA&E) to Assistant Secretary of Defense level; emphasize the ASD(PA&E)'s responsibility for the analysis of allied contributions in the review of DoD plans, programs, and budget submissions; clarify §§ 366.3 (e) and (f) to indicate that the referenced responsibilities also include classified programs; add responsibility for the review of Cost and Operational Effectiveness Analyses submitted in support of Defense Acquisition Board milestone decisions; and reflect the ASD(PA&E)'s role in the new program review and execution review phase of the Planning, Programming, and Budgeting System.

EFFECTIVE DATE: February 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. H. Becker, Office of the Director for Administration and Management, Washington, DC 20301-1155, telephone 202-697-0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 366

Organization and management.

Accordingly, 32 CFR Part 366 is revised to read as follows:

PART 366—ASSISTANT SECRETARY OF DEFENSE (PROGRAM ANALYSIS AND EVALUATION)

Sec.

366.1 Purpose.

366.2 Definition.

366.3 Responsibilities.

366.4 Functions.

366.5 Relationships.

366.6 Authorities.

Authority: 10 U.S.C. 136.

§ 366.1 Purpose.

This part is revised pursuant to the authority vested in the Secretary of Defense under 10 U.S.C.:

(a) Designates one of the positions of Assistant Secretary of Defense as the Assistant Secretary of Defense (Program Analysis and Evaluation) (ASD(PA&E)).

(b) Assigns responsibilities, functions, relationships, and authorities, as prescribed herein, to the ASD(PA&E).

§ 366.2 Definition.

DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Joint Chiefs of Staff (JCS), the Joint Staff, the Unified and Specified Commands, the Defense Agencies, and the DoD Field Activities.

§ 366.3 Responsibilities.

The Assistant Secretary of Defense (Program Analysis and Evaluation) (ASD(PA&E)). as the principal staff assistant to the Secretary of Defense for DoD program analysis and evaluation, shall:

(a) Provide advice, make recommendations, and participate in the development of policies and the preparation of planning, fiscal, and materiel support guidance upon which DoD program projections are based.

(b) Perform analyses and evaluations of plans, programs, and budget submissions in relation to projected threats, allied contributions, estimated costs, resource constraints, and U.S. defense objectives and priorities.

(c) Identify issues and evaluate alternative programs.

(d) Initiate programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, and ensure that programs are designed to accommodate operational requirements and promote the readiness and efficiency of the U.S. Armed Forces.

(e) Review, analyze, and evaluate programs, including classified programs, for carrying out approved policies and standards.

(f) Ensure that the costs of DoD programs, including classified programs, are presented accurately and completely.

(g) Assess the effects of DoD spending on the U.S. economy, and evaluate alternative policies to ensure that the DoD program can be implemented efficiently.

(h) Provide leadership in developing and promoting improved analytic tools and methods for analyzing national security planning and the allocation of resources.

(i) Serve on boards, committees, and other groups pertaining to the ASD(PA&E)'s functional areas, and represent the Secretary of Defense on PA&E matters outside the Department of Defense.

(j) Perform such other duties as the Secretary of Defense may assign.

§ 366.4 Functions.

In executing assigned responsibilities, the ASD(PA&E) shall:

- (a) Carry out the responsibilities described in § 366.3 for the following functional areas:
 - (1) General purpose force structure, both active and reserve.
 - (2) Strategic and theater nuclear force structure.
 - (3) Mobility force structure and positioning plans.
 - (4) Force readiness and capabilities.
 - (5) Weapon systems and major items of material.
 - (6) Implications for manpower resources of specific force structure plans.
 - (7) Support systems.
 - (8) Contingency plans.
 - (9) Materiel support programs and war reserve stocks.
 - (10) Deployment plans and overseas basing requirements.
 - (11) Mobilization plans.
 - (12) Effects of the DoD program on the economy and the industrial base.
 - (13) Security assistance programs.
 - (14) Allied and foreign military requirements and capabilities.
 - (15) Nuclear warhead requirements.
 - (16) Such other areas as the Secretary of Defense may from time to time prescribe.

(b) In coordination with the Under Secretary of Defense (Acquisition), perform critical reviews of requirements, performance, and life-cycle costs of current and proposed weapon systems, including reviews of Cost and Operational Effectiveness Analyses (COEA) submitted in support of Defense Acquisition Board milestone decisions. Provide advance guidance to the Military Departments on issues and techniques to be used in weapon system COEA.

(c) Provide leadership and support to the Cost Analysis Improvement Group in accordance with DoD Directive 5000.4.¹

(d) Provide support to the Planning, Programming, and Budgeting System, especially the program review and execution review phases.

§ 366.5 Relationships.

(a) In the performance of assigned functions, the ASD(PA&E) shall:

- (1) Coordinate and exchange information with other DoD organizations having collateral or related functions.
- (2) Use existing facilities and services of the Department of Defense or other

Federal Agencies to avoid duplication and achieve maximum efficiency and economy.

(b) Heads of DoD Components shall coordinate with the ASD(PA&E) on all matters related to the functions in § 366.4.

§ 366.6 Authorities.

The ASD(PA&E) is hereby delegated authority to:

(a) Issue instructions, publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M that implement policies approved by the Secretary of Defense in the functions assigned to the ASD(PA&E). Instructions to the Military Departments shall be issued through their Secretaries or designees. Instructions to Unified and Specified Commands shall be issued through the Chairman, Joint Chiefs of Staff (CJCS).

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 7750.5,² as necessary.

(c) Communicate directly with heads of DoD Components. Communications to the Commanders of the Unified and Specified Commands shall be coordinated with the CJCS.

(d) Establish arrangements for DoD participation in those nondefense governmental programs for which the ASD(PA&E) has been assigned primary cognizance.

(e) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 13, 1989.

[FR Doc. 89-3686 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD7-88-48])

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

AGENCY: Coast Guard, DOT.

ACTION: Revocation of temporary rule.

SUMMARY: The Coast Guard is revoking the temporary regulations governing the Southwest 12th Street (Davie Boulevard)

drawbridge at Fort Lauderdale, Florida, which authorized draw openings on 15-minute intervals. This temporary change is being revoked because public comments and on-site investigation by the Coast Guard evidence a continuing need for draw openings on an on-signal basis. This revocation is required because of the navigational hazard imposed on vessels during the 15-minute holding periods due to a very constricted vessel holding area on the south side of the bridge with strong cross currents creating unsafe vessel congestion while awaiting bridge openings.

DATES: These temporary regulations became effective on January 3, 1989 and were scheduled to terminate on March 4, 1989. This revocation is effective on January 24, 1989.

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

SUPPLEMENTARY INFORMATION: On January 9, 1989, the Coast Guard placed a temporary regulation (54 FR 611) in effect in order to evaluate a requested change to the drawbridge operation requirements.

During the period from January 19, 1989 to January 22, 1989, the Coast Guard performed on-site investigations to observe the effects of the temporary regulations. In addition, discussions were held with vessel operators and shipyard and marina operators to determine whether the 15 minute openings would create any significant problems for navigation. The investigation revealed there is an unusually large number of deep draft sailboats and large yachts often exceeding 100' in length that must transit the Davie Boulevard bridge during high tidal conditions. This creates circumstances wherein six or more large vessels with limited maneuverability may accumulate near the bridge in a very constricted holding area, often unable to hold position against an outgoing tide. Such a situation would create serious potential for vessel collisions. After considering these comments, the Coast Guard has decided to revoke the temporary regulations.

The existing permanent regulation remains in force. This regulation allows closure periods in the morning and afternoon for vehicular traffic rush hour periods from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m. on Monday through Friday. 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.

¹ Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1062, 5801 Tabor Avenue, Philadelphia, PA 19120.

² See footnote 1 to § 366.4(c).

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the temporary regulation to Part 117 of Title 33, Code of Federal Regulations published in the Federal Register on January 9, 1989 at Vol. 54, Page 611, is revoked.

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 it did before the temporary regulation went into effect on January 3, 1989:

§ 117.315 New River, South Fork.

(a) The draw of the Southwest 12th Street bridge, mile 0.9 at Fort Lauderdale, 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 draws 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.

February 9, 1989.

Martin H. Daniell,

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

[FR Doc. 89-3646 Filed 2-15-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE**Corps of Engineers, Department of the Army****33 CFR Part 334****Restricted Area, Thames River in Waterford/Groton, CT**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: We are affirming an interim final rule that established a naval restricted area in the waters of the Thames River in the vicinity of the New London Submarine Base. The restricted area is needed for the safety and security of Government owned facilities and vessels in the area.

ADDRESS: HQDA, CECW-OR, Washington, DC 20314-1000.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan Lee at (617) 647-8156 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: On November 28, 1988, the Corps of Engineers published an interim final rule in the Federal Register (53 CFR 47802) establishing a naval restricted area in 33 CFR 334.75 with the comment period ending on December 28, 1988. No comments were received. The facts presented in the interim final rule still provide the basis for this rule and is published without change except for an error made in the designation of the last paragraph (b)(iii) which should have been (b)(4).

Economic Assessment and Certification

This rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I hereby certify that this rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

Accordingly, the interim final rule establishing a new section 334.75 which was published at 53 CFR 47802-47803 on November 28, 1988, is adopted as a final rule without change except paragraph (b)(3)(iii) which is redesignated (b)(4).

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

§ 334.75 [Amended]

2. In § 334.75 paragraph (b)(3)(iii) is redesignated as (b)(4).

Dated: February 1, 1989.

Patrick J. Kelly

Brigadier General, USA, Director of Civil Works

[FR Doc. 89-3607 Filed 2-15-89; 8:45 am]

BILLING CODE 3710-92-M

33 CFR Part 334**Restricted Area, Key West Harbor at the U.S. Naval Air Station**

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is establishing two new restricted areas and amending the boundaries of several existing restricted areas in the waters

contiguous to the Key West Naval Air Station located on Key West, Fleming Key and Boca Chica Key in Monroe County, Florida. The restricted areas are required for the safety and security of Naval facilities and personnel.

EFFECTIVE DATE: March 20, 1989.

ADDRESS: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT:

Mr. Lonnie Shepardson at (904) 791-1677 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Air Station (NAS), Key West, Florida, has requested the Corps of Engineers amend the regulations in 33 CFR 334.610 to reestablish two restricted areas which were previously deleted; establish a new restricted area on Boca Chica Key, north from Highway No. 1 and expand the existing restricted area on Boca Chica Key. On November 22, 1988, the Corps published a Notice of Proposed Rulemaking in the Federal Register (53 FR 47226-47228) soliciting comments on the proposed changes to these restricted areas. We did not receive any comments in response to the proposed rule and accordingly, the final rules are published without change. A brief description of the changes to each of the restricted areas which was published in the proposed rules are not restated in this final rule.

Economic Assessment and Certification

This rule is submitted with respect to a military function of the Defense Department and the provisions of E.O. 12291 do not apply. I hereby certify that this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Restricted areas.

In consideration of the above, the Corps of Engineers is amending 33 CFR Part 334 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.610 is revised as set forth below.

§ 334.610 Key West Harbor, at U.S. Naval Base, Key West, Fla.; naval restricted area.

(a) *The areas.* (1) All waters within 100 yards of the south shoreline of the Harry S. Truman Annex, beginning at a

point on the shore at Latitude 24°32'45.3" N., Longitude 81°47'51" W.; thence to a point 100 yards due south of the south end of Whitehead Street of Latitude 24°32'42.3" N., Longitude 81°47'51" W.; thence extending westerly, paralleling the southerly shoreline of the Harry S. Truman Annex, to Latitude 24°32'37.6" N., Longitude 81°48'32" W., thence northerly to the shore at Latitude 24°32'41" N., Longitude 81°48'31" W. (Area #1).

(2) All waters within 100 yards of the westerly shoreline of the Harry S. Truman Annex and all waters within a portion of the Truman Annex Harbor, as defined by a line beginning on the shore at Latitude 24°33'00" N., Longitude 81°48'41.7" W.; thence to a point 100 yards due west at Latitude 24°33'00" N., Longitude 81°48'45" W.; thence northerly, paralleling the westerly shoreline of the Harry S. Truman Annex, including a portion of the Truman Annex Harbor entrance, to Latitude 24°33'23" N., Longitude 81°48'37" W.; thence southeasterly to the shore (sea wall) at Latitude 24°33'19.3" N., Longitude 81°48'28.7" W. (Area #2).

(3) All waters within 100 yards of the Coast Guard Station and the westerly end of Trumbo Point Annex beginning at the shore at Latitude 24°33'47.6" N., Longitude 81°47'55.6" W.; thence westerly to Latitude 24°33'48" N., Longitude 81°48'00.9" W.; thence due south to Latitude 24°33'45.8" N., Longitude 81°48'00.9" W., thence westerly to Latitude 24°33'47" N., Longitude 81°48'12" W.; thence northerly to Latitude 24°34'06.2" N., Longitude 81°48'10" W.; thence easterly to a point joining the existing restricted area around Fleming Key at Latitude 24°34'03.3" N., Longitude 81°47'55" W. (Area #3).

(4) Beginning at the last point designated in area 3 at Latitude 24°34'03.3" N., Longitude 81°47'55" W.; proceed northwesterly, maintaining a distance of 100 yards from the shoreline of Fleming Key, except for a clearance of approximately 400 yards across the mouth of Fleming Cove near the southwesterly end of Fleming Key, continue around Fleming Key to a point easterly of the southeast corner of Fleming Key at Latitude 24°34'00.8" N., Longitude 81°47'37.5" W.; thence easterly to Latitude 24°33'57.6" N., Longitude 81°47'20" W.; thence southerly to a point on the shore at Latitude 24°33'54.7" N., Longitude 81°47'20.9" W. (Area #4).

(5) All waters contiguous to the southwesterly shoreline of Boca Chica Key beginning at a point on the southwest shoreline at Latitude 24°33'24" N., Longitude 81°42'30" W.;

proceed due south 100 yards to Latitude 24°33'20.4" N., Longitude 81°42'30" W.; thence, maintaining a distance of 100 yards from the shoreline, proceed westerly and northerly to Latitude 24°34'03" N., Longitude 81°42'47" W.; thence due north to a point at the easterly end of the U.S. Highway 1 (Boca Chica Channel) bridge at Latitude 24°34'39" N., Longitude 81°42'47" W. (Area #5).

(6) All waters within 150 yards of the shoreline along a portion of the easterly shore of the Naval Air Station on Boca Chica Key between a point on the shoreline at Latitude 24°35'14" N., Longitude 81°41'44" W.; proceed in a northerly direction, maintaining 150 yards off shore, to Latitude 24°35'45.1" N., Longitude 81°41'55.2" W.; thence to a point on the shore at Latitude 24°35'42" N., Longitude 81°42'00" W. (Area #6).

(b) *The regulations.* (1) Entering or crossing in any of the restricted areas described in paragraph (a) of this section is prohibited except as follows: privately owned vessels, properly registered and bearing identification in accordance with Federal and/or State laws and regulations, and at night showing lights required by Federal laws and Coast Guard regulations or, if no constant lights are required, then a bright white light showing all around the horizon, may transit the following portions of the restricted areas:

(i) The channel, approximately 75 yards in width, extending from the northwest corner of Pier D-3 of Trumbo Point Annex, eastward beneath the Fleming Key bridge and along the north shore of Trumbo Point Annex.

(ii) A channel 150 feet in width which extends easterly from the main ship channel into Key West Bight, the northerly edge of which channel passes 25 feet south of the Trumbo Point Annex piers on the north side of the Bight. While the legitimate access of privately owned vessels to facilities of Key West Bight is unimpeded, it is prohibited to moor, anchor, or fish within 50 feet of any U.S. Government-owned pier or craft.

(iii) The dredged portion of Boca Chica channel from its seaward end to a point due south of the east end of the Boca Chica bridge.

(iv) All of the portion of restricted area number 2 that lies between the Truman Annex Mole and the Key West Harbor Range Channel. The transit zone extends to the northeasterly corner of the Truman Annex Mole, thence to the northeasterly corner of the restricted area at Latitude 24°33'19.3" N., Longitude 81°48'28.7" W.

(2) Stopping or landing by other than government-owned vessels and certain

specifically authorized private craft in any of the restricted areas described in paragraph (a) of this section is prohibited.

(3) Vessels using the restricted channel areas described in paragraph (b)(1) (i), (ii), (iii), and (iv) of this section shall proceed at speeds commensurate with minimum wake.

(c) The regulations in this section shall be enforced by the Commanding Officer, Naval Air Station, Key West, Florida, and such agencies as he/she may designate.

Date: February 1, 1989.

Approved:

Patrick J. Kelly,

Brigadier General, USA, Director of Civil Works.

[FR Doc. 89-3886 Filed 2-15-89; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3495-9]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 6, 1986, the Governor of Nebraska submitted a revision to the State Implementation Plan (SIP) to satisfy EPA's good engineering practice (GEP) stack height requirements as revised on July 8, 1985 (50 FR 27892). The state conducted a public hearing on March 14, 1986, to consider public comments regarding the revisions to the Nebraska stack height rules, and subsequently adopted the revisions on May 5, 1986.

The purpose of today's notice is to approve that portion of the Nebraska stack height SIP submittal which pertains to the rules revision.

DATES: This action will become effective on April 17, 1989 unless notice is received by March 20, 1989 that someone wishes to submit adverse or critical comments. Such notice may be submitted to Wayne Kaiser at the Kansas City EPA office listed below.

ADDRESSES: Copies of the state submittal for this action are available for public inspection during normal business hours at: the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; the Nebraska Department of Environmental Control,

Air Quality Division, Box 98922, Statehouse Station, Lincoln, Nebraska 68509; and the Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining GEP stack height.

Pursuant to the Act, all states were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by Section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 meters in height and sources with facilitywide allowable emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques.

These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

However, the EPA's stack height regulations were challenged in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

For this reason, today's notice is limited to action regarding the state's regulations.

Summary of Submission

On May 6, 1986, the Governor of Nebraska submitted the Nebraska stack height SIP revision. Additional material was submitted on July 1, 1986. The submission included revised stack height rules and detailed analyses of all sources whose stacks may be affected by the regulations. On March 14, 1986, the Nebraska Environmental Control Council conducted a public hearing and subsequently adopted the revisions to the stack height regulations.

The revised chapters of the Nebraska Air Pollution Control Rules and Regulations are as follows: Chapter 1—Definitions, Chapter 5—Stack Heights; and Good Engineering Practice (GEP). In Chapter 1, the state's definitions for "dispersion technique", "good engineering practice (GEP) stack height", "nearby", and "excessive concentration" are equivalent to the respective federal definitions. EPA's July 8, 1985, CFR revision deleted the definitions for "plume impaction" and "elevated terrain". The state deleted its

definition for "plume impaction" but retained its definition for "elevated terrain". The "elevated terrain" definition is consistent with the state regulation and does not conflict with the intent of the federal requirements.

Chapter 5 of the regulation "Stack Height; Good Engineering Practice (GEP)" is consistent with the federal requirements. The state rule provides that a source's emission limit shall not be affected in any manner by stack height in excess of GEP or by any other prohibited dispersion technique. Also, the public participation requirements for emission limits established in consideration of fluid modeling/field study demonstrations are met.

These rules apply to all new sources and modifications in Nebraska as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this rule applies to all sources that were or are constructed, reconstructed, or modified subsequent to December 31, 1970. EPA has reviewed the revisions to these regulations and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985.

Although the EPA generally approves Nebraska stack height rules on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F. 2d 1224 (D.C. Cir. 1988). If the EPA's response to the *NRDC* remand modifies the July 8, 1985, regulations, the EPA will notify the state of Nebraska that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Nebraska and source owners or operators.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective (60 days from the date of publication) unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that

this action will be effective April 17, 1989.

Final Action: EPA is taking final action to approve the amended Nebraska rules, Chapters 1 and 5, as a revision to the approved Nebraska SIP.

Under 5 U.S.C. section 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

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 April 17, 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, Incorporation by reference, Particulate matter, Sulfur oxides.

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

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

Dated: December 15, 1988.

Lee M. Thomas,
Administrator.

40 CFR Part 52, Subpart CC, is amended as follows:

PART 52—[AMENDED]

Subpart CC—Nebraska

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

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

2. Section 52.1420 is amended by adding paragraph (c)(36) to read as follows:

§ 52.1420 Identification of plan.

* * *

(c) * * *

(36) Revisions to Chapter 1, "Definitions", paragraphs 024, 025, 030, 037, 049; and Chapter 5, "Stack Heights: Good Engineering Practice (GEP)", were submitted by the Governor on May 6, 1986.

(i) Incorporation by reference

(A) Revisions to Chapter 1,

"Definitions", paragraphs 024, 025, 030, 037, 049; and Chapter 5, "Stack Heights: Good Engineering Practice (GEP)", effective May 5, 1986.

(ii) Additional material.

(A) None.

[FR Doc. 89-3601 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 262

[FRL-3521-9]

Hazardous Waste Management System; Standards for Generators of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of extension of manifest expiration date.

SUMMARY: Today's notice informs all users of the Uniform Hazardous Waste Manifest (EPA Forms 8700-22 and 8700-22A) of a six-month extension of the date of mandatory use of the new manifest form and inclusion of the Office of Management and Budget (OMB) burden disclosure statement as described in the Federal Register notice of November 8, 1988 (53 FR 45089). The extension requested by EPA was approved by OMB on December 16, 1988. The extension is from December 31, 1988, through June 30, 1989.

DATES: On July 1, 1989, use of the new manifest (expiration date September 30, 1991), and inclusion of the OMB burden disclosure statement will be mandatory.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline toll-free at (800) 424-9346, or in Washington, DC call 382-3000. For information on specific aspects of today's notice, contact Emily Roth, (202) 382-4777, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: On November 8, 1988 EPA published a Federal Register notice renewing the Uniform Hazardous Waste Manifest for a three year period, and mandating the inclusion of an OMB burden disclosure statement with the form. The November 8, 1988 FR notice stated that the regulated community must include the burden statement and use only the renewed form after December 31, 1988 (53 FR 45089). However, the Office of Solid Waste (OSW) realized that the December 31, 1988 compliance date put an undue hardship upon the regulated community, and received from OMB a six-month extension on compliance with the requirements.

Because it was not the intention of EPA or OMB to waste resources unnecessarily, or cause a situation which resulted in noncompliance of States or facilities, EPA requested a six-

month extension to the expiration date of the previous form (September 30, 1988). On July 1, 1989 inclusion of the burden disclosure statement and use of the new manifest with the expiration date of September 30, 1991, will be mandatory. The extension creates a transition period during which either form (old or new) may be used.

In the event that manifest users have remaining supplies of the old manifest on June 30, 1989, they may continue to use them after June 30, 1989, if they overprint the new expiration date, "9/30/91", over the old expiration date, "9/30/88", and attach the burden disclosure statement.

The burden disclosure statement required with each Uniform Hazardous Waste Manifest form is as follows:

Public reporting burden for this collection of information is estimated to average: 37 minutes for generators, 15 minutes for transporters, and 10 minutes for treatment, storage and disposal facilities. This includes time for reviewing instructions, gathering data, and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

EPA and OMB have outlined three ways in which manifest users can comply with the burden disclosure statement requirement:

1. The statement is printed on the form. The burden statement would, therefore, accompany the waste during shipment. Generators, transporters, and TSD would have the opportunity to see the statement.

2. The statement is printed in the instructions to the form. This approach may result in the following two outcomes, either of which is acceptable to OMB:

Outcome A. The instructions may be on a separate sheet of paper which is removed or detached from the manifest after it is filled out by the generator. The statement would not accompany the shipment. Although all parties to the shipment may not have the opportunity to see the statement, complying in this way is acceptable to OMB.

Outcome B. The instructions may be printed on the form or on the back of the form. In this case, the burden statement would accompany the form during shipment and all parties to the shipment would have the opportunity to see it.

3. The statement is attached to the form. In this case the OMB burden statement is on a separate sheet of paper and must be conveyed with the form and the shipment from the generator to the treatment, storage or disposal facility (TSD). One copy of the statement could accompany each multi-copy form provided it is attached in such a way as to remain with the manifest when it reaches the TSD.

The choices above outline the ways in which compliance with the OMB burden disclosure statement can be achieved. One situation, that of the detachable instructions, results in the burden statement not accompanying the form during waste shipment. This is acceptable to OMB.

Jonathan Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 89-3624 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1828 and 1852

Changes to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule provides a cross-waiver of liability clause for use in certain contracts related to the Space Station.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT:

W.A. Greene, Chief, Regulation Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA, Washington, DC 20546, Telephone (202) 453-8923.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1988, the United States Government and eleven other Governments signed an agreement "On Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station." Article 16 of this international agreement provided for a "Cross-Waiver of Liability." In effect, this international agreement and other related agreements obligated each of the Governments to adhere to the cross-waiver of liability and to extend the cross-waiver of liability to its contractors and subcontractors, among other persons and entities, by contract or otherwise.

This rule was published as an interim rule in the *Federal Register* of November

8, 1988 (53 FR 45095). The single public response did not require changes in the rule; however, several clarifying editorial changes were made in the interim rule. In 1852.228-76, paragraph (b)(4) of the clause, it was made clear that the Federal Republic of Germany is a partner state. In paragraph (b)(6)(i), the conjunction "and" was expressly added at the end of the sentence to confirm that the relevant definition was comprised of both (b)(6)(i) and (ii). In addition, a definition of "Space Station" for purposes of the cross-waiver previously contained in the Space Station Intergovernmental Agreement signed on September 29, 1988, and impliedly incorporated by reference to that Agreement in the interim rule, is provided for in full in the new (b)(8). Finally, (j) was amended, consistent with NASA practice, to authorize contractors to modify this cross-waiver in subcontracts to reflect the relationship of the parties.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. This proposed regulation falls in this category. NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 48 CFR Parts 1828 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1828 and 1852 continues to read as follows:

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

PART 1828—BONDS AND INSURANCE

2. Part 1828 is amended by adding section 1828.001 to read as follows:

1828.001 Definitions.

"Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to—

(a) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer

vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and

(b) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

The term "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

3. Subpart 1828.3 is amended by adding section 1828.373 to read as follows:

1828.373 Clause for cross-waiver of liability for Space Station activities.

(a) The contracting officer shall insert the clause at 1852.228-76, Cross-Waiver of Liability for Space Station Activities, in all NASA prime contracts, new-work modifications or extensions to existing contracts, and solicitations of \$100,000 or more when the work is to be performed in support of Protected Space Operations (see 1828.001). The contracting officer shall modify all other such existing contracts of \$100,000 or more as soon as practicable to include the clause.

(b) The contracting officer may insert the clause at 1852.228-76 in contracts, new-work modifications or extensions to existing contracts and solicitations under \$100,000 when the work is performed in support of Protected Space Operations. The use of the clause would be appropriate in contracts under \$100,000, particularly when it is likely that such a contractor or subcontractor will have its valuable property exposed to risk of damage caused by other Space Station participants involved in Protected Space Operations.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Part 1852 is amended by adding section 1852.228-76 to read as follows:

1852.228-76 Cross-waiver of liability for Space Station activities.

As prescribed in 1828.373, insert the following clause:

Cross-Waiver of Liability for Space Station Activities (February 1989)

(a) The objective of this clause is to establish a cross-waiver of liability in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the Space Station. This cross-waiver of liability should be broadly construed to achieve this objective.

(b) For purposes of this clause:

(1) The term "the Contractor" means the person or entity who is a party to this contract, other than the United States Government and NASA.

(2) The term "damage" means:

(i) Bodily injury to, or other impairment of health of, or death of, any person;

(ii) Damage to, loss of, or loss of use of, any property;

(iii) Loss of revenue or profits; or

(iv) Other direct, indirect or consequential damage.

(3) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(4) The term "Partner State" means the Governments of Belgium, Canada, Denmark, France, Italy, the Federal Republic of Germany, Japan, Netherlands, Norway, Spain, and the United Kingdom of Great Britain and Northern Ireland. It includes a Cooperating Agency of a Partner State and the National Space Development Agency of Japan. (The currently designated Cooperating Agencies are the Ministry of State for Science and Technology of Canada, the European Space Agency and the Science and Technology Agency of Japan.)

(5) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(6) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space related to Space Station. It includes, but is not limited to:

(i) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles (for example, the Orbital Maneuvering Vehicle), the Space Station, or a payload, as well as related support equipment and facilities and services; and

(ii) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.

"Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in the Space Station Intergovernmental Agreement signed on September 29, 1988. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process for use other than for Space Station related activities.

(7) The term "related entity" means:

(i) A contractor or subcontractor of a Partner State, of the United States Government or of the Contractor, at any tier;

(ii) A user or customer of a Partner State or of the United States Government, at any tier; or

(iii) A contractor or subcontractor of a user or customer of a Partner State or of the United States Government, at any tier.

The terms "contractors" and "subcontractors" include suppliers of any kind.

(8) The term "Space Station" means all the elements listed in the Annex to the Space Station Intergovernmental Agreement signed on September 29, 1988, including any capability added to Space Station through evolution as provided in that Agreement.

(c) The United States Government shall require (1) each Partner State; (2) each related entity of a Partner State; and (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government; to agree, by contract or otherwise, to waive all claims, based on damage arising out of Protected Space Operations, against the Contractor; the Contractor's contractors or subcontractors at any tier; and the employees of the Contractor or the employees of the Contractor's contractors or subcontractors at any tier.

(d) In consideration for the cross-waiver set forth in paragraph (c) above, the Contractor agrees to a cross-waiver of liability pursuant to which it waives all claims, based on damage arising out of Protected Space Operations, against (1) each Partner State; (2) each related entity of a Partner State; (3) except as provided for in paragraph (h)(1) below, each related entity of the United States Government; and (4) except as provided for in paragraph (h)(1) below, the employees of any of the entities identified in paragraph (d) (1) through (3) above.

(e) In addition, the Contractor agrees to extend the cross-waiver of liability as set forth in paragraph (d) above to its own related entities by requiring them, by contract

or otherwise, to agree to waive all claims, based on damage arising out of Protected Space Operations, against the entities or persons identified in paragraphs (d)(1) through (d)(4), above, except as provided for in paragraph (h)(1) below.

(f) This cross-waiver in paragraphs (c), (d), and (e) above shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver in paragraphs (c), (d), and (e) above applies to any claims for damage, whatever the legal basis for such claims, including but not limited to delict and tort (including negligence of every degree and kind) and contract.

(g) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the *Convention on International Liability for Damage Caused by Space Objects* where the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(h) Notwithstanding the other provisions of this clause, this cross-waiver of liability shall not be applicable to:

(1) Claims between (i) the United States Government and the Contractor or between the United States Government and the Contractor's contractors or subcontractors at any tier; (ii) between the Contractor and its related entities; or (iii) between the Contractor's related entities;

(2) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

(3) Claims for damage caused by willful misconduct; and

(4) Intellectual property claims.

(i) Nothing in this clause shall be construed to create the basis for a claim or suit where none would otherwise exist.

(j) This clause, including this paragraph (j), shall be included in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties, where the work is to be performed in support of Protected Space Operations.

(End of clause)

[FR Doc. 89-3675 Filed 2-15-89; 8:45 am]

BILLING CODE 7510-01-M

Proposed Rules

Federal Register

Vol. 54, No. 31

Thursday, February 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program; Withdrawal of Carrier and Plan Approval

AGENCY: Office of Personnel
Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend the Federal Employees Health Benefits (FEHB) Program regulations to provide some additional details on the circumstances, behaviors, and/or practices that could lead to OPM's withdrawing approval of either a health benefits plan or a carrier for that plan to continue its participation in the FEHB Program. These revisions would incorporate by reference a number of standards for carrier performance currently found in another body of regulations, the Federal Acquisition Regulation (FAR) as supplemented by the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The proposed regulation would also provide some specific examples based on those standards of the types of situations that could give rise to OPM's withdrawing approval for either a health benefits plan or a carrier to continue in the Program.

DATE: Comments must be received on or before April 17, 1989.

ADDRESS: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 632-4634.

SUPPLEMENTARY INFORMATION: Section 8902(e) of title 5, United States Code, authorizes OPM to prescribe reasonable minimum standards for FEHB Program

plans and for carriers offering the plans. The minimum standards for FEHB Program plans and carriers, respectively, are found in §§ 890.201 and 890.202, Title 5, Code of Federal Regulations. These standards are supplemented by the contracting principles and requirements set forth in Chapters 1 (the FAR) and 16 (the FEHBAR) of Title 48, Code of Federal Regulations. The statutory authority for OPM to set minimum standards for FEHB plans and carriers bears with it the obligation to take action against plans and carriers that fail to comply with those standards. It is important to bear in mind the distinction drawn between the terms "carrier" and "health benefits plan" in the FEHB law itself. The "carrier" is the legal entity with which OPM contracts for the package of benefits normally referred to as the "health benefits plan."

Both the FAR and the FEHBAR contain numerous requirements that carriers must meet in order to continue to contract under the FEHB Program. Although OPM views these requirements for contracting as additional standards which must be met by FEHB carriers, we have not actually incorporated these standards by reference in Part 890 of Title 5, Code of Federal Regulations. We are now proposing to correct this situation by referencing the requirements/standards set forth both in the FAR and the FEHBAR in the minimum standards section of the FEHB regulations found in Part 890 of Title 5, Code of Federal Regulations. In addition to a general reference to the FAR and the FEHBAR in the proposed regulations, we have cited a number of examples drawn from those regulations for illustrative purposes in § 890.202.

These proposed revisions to the FEHB regulations would serve to consolidate the minimum standards and provide the carriers with a greater understanding as to what actions on their part might warrant OPM's withdrawal of approval under § 890.204 of the FEHB regulations. Withdrawal of approval effectively terminates the contract with a carrier for a health benefits plan and would normally take effect at the end of a contract term. However, OPM may decide to withdraw approval before the end of the contract term.

Imprudent or improper business practices which would cause OPM to

withdraw approval of a carrier include, but are not limited to, knowingly presenting false claims by charging expenses to the contract which under the contract terms are not chargeable to the contract, using fraudulent or unethical business or health care practices, and repeatedly and knowingly providing false or misleading information in the rate setting process. In addition, a pattern of failing to comply with OPM instructions and directives, deceptive advertising, the commingling of FEHB and non-FEHB funds, and other improper investment and cash management practices of FEHB funds as prohibited under the FAR or the FEHB Program law and regulations would be grounds for OPM to withdraw its approval for a carrier to continue its participation in the Program.

The FEHB law authorizes OPM to withdraw approval of a plan and terminate a carrier's contract if, at any time during the preceding two contract terms, a carrier has fewer than 300 employees and annuitants enrolled in the plan (5 U.S.C. 8902(e)). OPM also proposes to incorporate this statutory provision in the FEHB regulations as a minimum standard. The procedures in § 890.204(b) reflect current OPM practice in the treatment of plans with a minimal Federal enrollment.

Finally, we have set out procedures for withdrawing approval in greater detail than in previous regulations [5 CFR 890.204]. With regard to the hearing process outlined in § 890.204, it is important to note that a number of terms are used either in the FAR, the FEHBAR, Title 5, United States Code, or in the FEHB regulations at 5 CFR Part 890, such as "withdrawal of approval," "suspension," "debarment," "contract termination," etc., which, for the purpose of entitlement to a hearing, have the same practical effect. A voluntary withdrawal from the Program on the part of the carrier for one or more health benefits plans does not convey the right to a hearing under § 890.204 of the regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a

substantial number of small entities because it primarily clarifies existing OPM policy on withdrawing approval of FEHB plans and carriers.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U. S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104; § 890.803 also issued under sec. 303 of Pub. L. 99-569, 180 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

2. In § 890.201, the introductory text to paragraphs (a) and (b) are revised, and new paragraphs (a)(11) and (c) are added to read as follows:

§ 890.201 Minimum standards for health benefits plans

(a) To qualify for approval by OPM, a health benefits plan shall meet the following standards. Once approved, a health benefits plan shall continue to meet the minimum standards. Failure on the part of the carrier's plan to meet the standards is cause for OPM's withdrawal of approval of the plan in accordance with 5 CFR 890.204. A health benefits plan shall:

* * *

(11) Except where OPM determines otherwise, have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan at some time during the preceding two contract terms.

(b) To be qualified to be approved by OPM and, once approved, to continue to be approved, a health benefits plan shall not:

* * *

(c) The Director or his or her designee will weigh the seriousness of the carrier's actions and its proposed procedure to effect corrective action in determining whether or not to withdraw approval of the plan.

3. In § 890.202, paragraphs (a) through (f) are redesignated as (1) through (6) respectively, the introductory text to the section is designated as paragraph (a) and revised, and new paragraphs (b), (c), and (d) are added to read as follows:

§ 890.202 Minimum standards for health benefits carriers.

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code, Chapters 1 and 16 of Title 48, Code of Federal Regulations, and the following standards. The carrier shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the above cited standards while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with § 890.204 of this part.

* * *

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

(1) Timely compliance with OPM instructions and directives.

(2) Legal and ethical business and health care practices.

(3) Compliance with the terms of the FEHB contract, regulations and statutes.

(4) Timely and accurate adjudication of claims or rendering of medical services.

(5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.

(6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier.

(1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract.

(2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty.

(3) Repeatedly and knowingly providing false or misleading information in the rate setting process.

(4) Repeated failure to comply with OPM instructions and directives.

(5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract.

(6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.

(d) The Director or his or her designee will weigh the seriousness of the carrier's actions and its proposed method to effect corrective action in determining whether or not to withdraw approval of the carrier.

4. Section 890.204 is revised to read as follows:

§ 890.204 Withdrawal of approval of health benefits plans or carriers.

(a) The Director, or his or her representative, may withdraw approval of a health benefits plan or carrier if the standards at §§ 890.201 and 890.202 of this part are not met. Such action carries with it the right to a hearing as provided in paragraph (a)(2) of this section.

(1) Before withdrawing approval, the Director or his or her representative shall notify the carrier of the plan, by certified mail, that he or she intends to withdraw approval of the health benefits plan and/or carrier. The notice shall set forth the reasons why approval is to be withdrawn. The carrier is entitled to reply in writing within 15 calendar days after its receipt of the notice, stating the reasons why approval should not be withdrawn.

(2) On receipt of the reply, or in the absence of a timely reply, the Director or representative shall set a date, time, and place for a hearing. The carrier shall be notified by certified mail at least 15 calendar days in advance of the hearing. The Director or representative shall conduct the hearing unless it is waived in writing by the carrier. The carrier is entitled to appear by representative and present oral or documentary evidence, including rebuttal evidence, in opposition to the proposed action.

(i) A transcribed record shall be kept of the hearing and shall be the exclusive record of the proceeding.

(ii) After the hearing is held, or after OPM's receipt of the carrier's written waiver of the hearing, the Director shall make a decision on the record and send it to the carrier by certified mail. A decision of the Director shall be

considered a final decision for the purposes of this section. The Director, or his or her representative, may set a future effective date for withdrawal of approval.

(b) The Director, or his or her representative, will give written notice of non-renewal of the contract of a carrier whose plan does not meet the minimum enrollee requirement in § 890.201(a)(11) of this part at least 60 days before the contract renewal date. However, the Director or representative may defer withdrawing approval of a plan not meeting the requirement in § 890.201(a)(11) of this part when, in the judgement of OPM, the carrier shows good cause. The Director or representative may authorize a plan with fewer than 300 employees or annuitants to remain in the FEHB Program when he or she determines, in his or her discretion, that it is in the best interest of the Program (e.g., when the plan is the only plan available to enrollees in a rural area).

(c) The Director or representative, in his or her discretion, may reinstate approval of a plan or carrier under this section on a finding that the reasons for withdrawing approval no longer exist.

[FR Doc. 89-3597 Filed 2-15-89; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking and extension of time.

SUMMARY: The Federal Trade Commission is considering whether to amend its trade regulation rule concerning franchises and business opportunity ventures (16 CFR Part 436). In particular, the Commission is considering whether to amend the rule's earnings claim and preemption provisions (16 CFR 436.1(b)-(e) and 436.3 (Note 2) to reduce the costs and burdens arising from the present provisions.

The Commission invites written public comments concerning possible amendments to these provisions, and announces that until further notice, franchisors using the Uniform Franchise Offering Circular ("UFOC") for compliance may continue to follow either the Item 19 earnings claim requirements in the September 1975 UFOC Guidelines or the revised Item 19

requirements in the UFOC revision of November 21, 1986. The extension is necessary to avoid inconsistent state and federal compliance obligations.

In all other respects franchisors will be required to comply with the requirements of the 1986 UFOC revision, as previously announced (52 FR 22686); namely, the provisions of revised Item 20 that require new disclosures about former franchisees. In general, the obligation to comply with the revised UFOC requirements takes effect on the earliest date after December 31, 1988, on which an annual revision, an amendment to reflect a material change or a quarterly update is required to be provided to prospective franchisees by the rule or state law.

DATES: Written comments will be accepted until April 17, 1989.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. All comments should be captioned: "Comment of Advance Notice of Proposed Rulemaking-Franchise Rule, FTC File No. R511003."

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Franchise Rule Coordinator, PC-H-238, Federal Trade Commission, Washington, DC 20580. (202) 326-2970.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1978, the Commission promulgated a trade regulation rule titled "Disclosure Requirements and Prohibitions Concerning Franchises and Business Opportunity Ventures" ("Franchise Rule" or "Rule").¹ After the issuance of Final Interpretive Guides ("Guides") on August 24, 1979,² the Franchise Rule took effect on October 21, 1979. The statutory authority for promulgating and amending the Rule is provided by Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, as amended.

The Franchise Rule requires franchisors, as defined by the Rule, to give pre-sale disclosures to prospective franchise buyers at least 10 business days before they pay any money or sign a legally binding agreement in connection with the purchases of a franchise. The disclosures provide material information about the franchise, the franchisor and the franchise relationship, and are designed to give potential investors the information they need to make a well-

informed investment decision about a franchise offer.

The Guides to the Rule authorize franchisors to comply with its requirements by using disclosures in the format prescribed by the Rule or by the Uniform Franchise Offering Circular ("UFOC") Guidelines issued on September, 1975.³ The UFOC is a disclosure format prepared by the administrators of the state franchise registration and disclosure laws to permit franchise companies to use a single disclosure document to comply with the differing state disclosure requirements. The Commission determined that use of the UFOC would be sufficient for compliance with the Rule because, in the aggregate, the UFOC provides protection to prospective franchisees that is equal to or greater than that provided by the Rule.⁴

On November 21, 1986, the North American Securities Administrators' Association ("NASAA") adopted revisions to two provisions of the UFOC, Item 19 and Item 20, and requested Commission approval of the continued use of the UFOC, as revised, to comply with the Rule. On June 9, 1987, the Commission authorized franchisors using the UFOC for Rule compliance to use either the original or revised UFOC until December 31, 1988, but only the revised UFOC after December 31, 1988.⁵ This phase-in of the revised requirements was provided to allow adequate time for the states to implement the UFOC changes in their jurisdictions.

Two states did not formally implement the Item 19 UFOC revision by the deadline.⁶ Item 19 requires franchisors that make claims about actual, average, projected or forecasted sales, profits or earnings to include those claims in the UFOC, together with specified substantiation for them. The revised substantiation requirements now required for UFOC compliance with the Rule appear to ease compliance costs and burdens substantially, and differ significantly from the original Item 19 requirements. Thus, in the states that continue to require the original Item 19 disclosures, franchisors that wish to provide earnings information to prospective franchisees can no longer do so without violating either the state or federal disclosure requirements.

¹ 44 FR 49970.

² Id.

³ 52 FR 22686 (June 15, 1987).

⁴ The same problem has not arisen with respect to the Item 20 revision, which requires expanded disclosures about franchise failures.

⁵ 43 FR 59617 (Dec. 21, 1978).

⁶ 44 FR 49966 (Aug. 24, 1979).

The alternative of using the Rule's disclosure format in these states may not be a viable one for many franchisors. While some of the 13 states with franchise disclosure filing requirements will accept the Rule's disclosure format for filing, many have failed to authorize its use. Thus, national franchisors that sought to use the Rule's disclosure format to avoid the Item 19 problem in one state would violate the laws of other states if they tried to use the same disclosures everywhere.

In short, parallel federal and state regulation of the sale of franchises now clearly imposes inconsistent obligations on franchisors. The pre-sale disclosure requirements with which franchisors must comply at their peril will no longer permit the use of uniform disclosures in all states unless action is taken at the state or federal level to resolve the inconsistency.

II. Extension of Time

In the interests of promoting uniformity, and minimizing burdens on the sale of franchises, the Commission has decided to grant a temporary extension of the time during which franchisors may continue to comply with the Rule by using disclosures that meet either the original or revised UFOC Item 19 requirements. The extension will remain in effect during the pendency of the proposed rulemaking proceeding that is the subject of this Advance Notice of Proposed Rulemaking, or until further order of the Commission.

In all other respects, franchisors must comply with the requirements of the revised UFOC as of January 1, 1989, as the Commission previously announced, if they wish to use the UFOC for Rule compliance.⁷ In particular, they must comply with revised UFOC Item 20. The Item 20 revision has been implemented uniformly by all the states with franchise disclosure laws.

The obligation to comply with the revised UFOC requirements is incurred, in a state with a registration or disclosure law, on the first date after December 31, 1988, that the state law requires a franchisor to provide potential investors with an annual disclosure renewal or an amendment to reflect a material change in prior disclosures. The obligation is incurred in states without such franchise laws on the same date as the franchisor is first required, after December 31, 1988, to provide a disclosure renewal or amendment by a registration or disclosure law in a state in which it is selling franchises. If a franchisor does

not sell franchises in any state with a registration or disclosure law, the obligation to comply with the revised UFOC requirements is incurred on the first date after December 31, 1988, on which an annual revision or quarterly update is required by the Rule.

III. Amendment Proceeding

The Commission now proposes to begin a rulemaking amendment proceeding for the limited purpose of reexamining the Rule's provisions concerning earnings claims and preemption. To assist in developing possible alternatives to these requirements that would reduce the costs and burdens of the present provisions, the Commission invites interested parties to address the issues outlined below in written comments filed in response to this advance notice of proposed rulemaking.

In the proceeding, the Commission plans to reconsider only the earnings claim and preemption provisions of the Rule, and none others. During the proceeding, all of the Rule's provisions, including the earnings claim and preemption provisions, will remain in effect.

A. Earnings Claims

In promulgating the Franchise Rule's earnings claim requirements in § 436.1(b)-(e), the Commission attempted to strike a balance between the protection of potential investors from deceptive claims and the costs, burdens and potential entry barriers that overregulation may produce. The Commission's primary goal in establishing the requirements, as in issuing the Rule, was to enhance the availability of reliable information in the marketplace to permit potential investors to make informed investment decisions.

Nonetheless, the Rule's earnings claim requirements are extensive. Franchisors that wish to make claims about actual or potential sales, profits or earnings must provide detailed disclosures mandated by § 436.1(b)-(e) of the Rule.

Section 436.1(b) enumerates the requirements for claims based on projections or forecasts; § 436.1(c), for claims based on actual operating results; and § 436.1(e), for claims that appear in media advertising. The franchisor must have a "reasonable basis" for all such claims, they must be "geographically relevant" to the potential franchisee's market area, and if they are based on operating results, must be prepared in accordance with generally accepted accounting principles.

The franchisor must also give a separate earnings claim disclosure

document to any potential investor to whom such a claim is made. The earnings claim document must contain a cover page specified by § 436.1(d); a full statement of the basis and assumptions for the claim; prescribed cautionary language that depends on the type of claim made; a notice that substantiating material is available for inspection by investors; a disclosure of the number and percentage of the franchisor's outlets that have achieved the same or better results; and certain additional information that depends on the type of claim made.

The earnings disclosure requirements of the Rule, in effect, place a minimum standard on the quality of information that a franchisor must possess before making an earnings claim. If potential investors are well informed about the Rule, then they may perceive earnings claims as more reliable than if there were less stringent standards.⁸ In addition, franchisors that do not make earnings claims may still be providing potential investors with relevant earnings information. The absence of earnings claims may indirectly express the fact that the franchisor does not have adequate information to make a claim, or does not wish to reveal poor results.

Studies of federal and state franchise disclosure requirements raise significant questions about whether these requirements are enhancing the availability of reliable earnings information in the marketplace. A 1984 study of the impact of the Rule on franchisees and potential investors first raised the issue of whether earnings claim disclosure requirements were inhibiting franchisors from making claims or driving such claims underground.⁹ The study found that:

Only a minority of franchisors made earnings claims, and it is not entirely clear that those who did backed up the claims with Earnings Claims Documents [required by the Rule]. Respondents by and large, were desirous of more information on sales or profit***.¹⁰

Although the study went on to find that most potential franchisees who sought earnings information were successful in obtaining it, over half of the information was conveyed orally, only 27 percent was in writing, and only 5 percent was provided in connection

⁸ On the other hand, investors may place too much reliance on earnings claims that meet such quality standards, and fail to investigate variables unique to their proposed locations.

⁹ Audits & Surveys, Inc., A Study of the Impact of the Franchise Disclosure Rule on Franchisees and Potential Investors (1984).

¹⁰ *Id.* at 42.

⁷ 52 FR 22086.

with the required earnings claim documentation.¹¹

A 1985 survey of the Rule's economic impact on franchisors suggested some possible explanations.¹² Almost two-thirds of the franchisors surveyed agreed with the view that:

Present disclosure regulations make it difficult to make earnings claims, and this, in practice, ultimately hurts prospective franchisees more than franchisors.¹³

In addition, franchisors regarded information on franchisee sales, profits or earnings as one of the five most important disclosures, yet almost half identified this information as one of the five disclosures most costly to provide.¹⁴

Most recently, a 1988 study found that only 64 (or 11.5 percent) of all franchisors registered to sell franchises in Maryland under the State franchise law made earnings claim disclosures.¹⁵ Although the study found no consistent relationship between franchisors making earnings claims and their net worth, years in business or number of outlets, the data show that 24 percent of the franchisors ranked by *Venture* magazine as the fastest growing made earnings claims, and that franchisors listed in the top 500 in the industry by *Entrepreneur* magazine were four times more likely to make such claims than those that were not listed.¹⁶ While Maryland registrants may not be representative of all U.S. franchisors, the author concluded that:

In the absence of a requirement that written earnings claims be made, the vast majority of franchisors do not make them. The reasons most often stated for not making written earnings claims are that federal and state regulations make the claims too difficult and expensive to prepare, that the claims might be used by disgruntled franchisees in future lawsuits, and that there is no "reasonable basis" for a claim due to factors such as too few outlets, inadequate operating histories or geographic variances in performance.¹⁷

These studies suggest that the earnings claim disclosure requirements of the Rule and state franchise laws either may be reducing the availability of relevant information, or assuring that it is provided, if at all, in under-the-table

circumstances that cast doubt on its accuracy and reliability. If that is so, the earnings claim requirements may be having the unintended effect of reducing the availability of reliable information in the market.

The fact that NASAA has responded at the state level by simplifying the earnings claim requirements in Item 10 of the UFOC indicates that consideration of similar revisions to the Rule's earnings claim requirements may be desirable. NASA's action suggests that simplification that reduces compliance costs and burdens may be possible without any real diminution in investor protection.

Accordingly, the Commission invites submission of evidence and the views of interested parties concerning whether or not the Commission should amend the Rule's earnings claim disclosure requirements. In the amendment proceeding, the Commission will consider possible alternatives to the requirements, including: (1) Amended requirements similar to those of revised UFOC Item 19; (2) amendments substituting the abbreviated requirements for advertised claims in Part 436.1(e) of the Rule for the more extensive requirements for other claims; (3) amendments excluding analyses of costs and break-even sales figures from the earnings claim requirements in limited circumstances; (4) amendments providing presumptions of satisfactory compliance if relevant accounting standards have been met, both for claims based on actual operating experience and forecasts or projections; (5) amendments to the manner in which required disclosures must be made; and (6) amendments to other Rule provisions that may reduce the need for extensive earnings claim requirements.

The Commission will be particularly interested in receiving evidence and comment on the following questions:

(1) What is the extent to which franchisors are currently complying or failing to comply with the earnings claim requirements of: (a) Item 19 of the UFOC; and (b) the Rule? (Please provide, to the extent possible, information about the number or percentage of firms making earnings claims, any statistical or financial information about the size and type of firms making such claims, and the geographic areas in which the claims are made.)

(2) To what extent have franchisors that did not previously make earnings claims been prompted to make such claims by the revised UFOC Item 19 requirements?

(3) What are the costs and benefits of compliance with: (a) The Rule's earnings

claim requirements; (b) the original UFOC Item 19 requirements; and (c) if known, revised UFOC Item 19? What specific provisions of these requirements, if any, have prevented or inhibited franchisors from making earnings claims? What other considerations, if any, have inhibited franchisors from providing earnings information?

(4) How and to what extent have the requirements of revised UFOC Item 19 increased or decreased the costs and benefits of earnings claims compared to the costs and benefits of: (a) The original UFOC Item 19 requirements; and (b) the Rule's requirements?

(5) Should the rule be amended to limit the disclosure requirements for all earnings claims to a statement of the number and percentage of franchisees who have achieved the sales, income or profits claimed, if all claims are: (a) Subject to a "reasonable basis" requirement; or (b) not subject to such a requirement? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(6) Should a presumption of a reasonable basis be provided for historical earnings claims based on actual operating experience if they are prepared in accordance with applicable accounting standards; and if so, would such a presumption be likely to encourage the availability of reliable earnings information? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(7) Should the Rule be amended to provide a presumption of a reasonable basis for earnings forecasts or projections prepared in accordance with the Statement on Standards for Accountants' Services on Prospective Financial Information issued by the American Institute of Certified Public Accountants, notwithstanding the fact that they do not require use of the most probable results; and if so, would such a presumption be likely to encourage the availability of reliable earnings information? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(8) How should "reasonable basis" be defined so that franchisors are encouraged to provide earnings information to prospective franchisees? What are the costs and benefits of such a definition? Are there circumstances in

¹¹ *Id.* at 33.

¹² Opinion Research Corp., Final Report of a Survey to Evaluate the Economic Impact on Franchisors of the FTC Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (1985).

¹³ *Id.* at I-8.

¹⁴ *Id.* at I-5.

¹⁵ W. Lewis, Earnings Claim Study: A Study of Franchisors Registered with the Securities Division of the State of Maryland, 17 (1988).

¹⁶ *Id.* at 9-10, 22 and 23.

¹⁷ *Id.* at 4.

which such a definition should not apply, or which warrant limitations on its applicability?

(9) Should the Rule be amended to exclude cost analyses and break-even sales data from the Rule's earnings claim requirements: (a) Under all circumstances; or (b) subject to specified conditions (e.g., if profitability cannot be computed from the figures provided)? What are the costs and benefits of such an amendment?

(10) Should the Rule be amended to require earnings claim disclosures in the basic disclosure document required by § 436.1(a) of the Rule, rather than in a separate earnings claim document? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(11) Should the Rule be amended to require that the basic disclosure document include a statement of whether or not the franchisor makes such claims and is required to provide separate earnings disclosures? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(12) Would amendment of other Rule provisions, such as the addition of the new disclosure required by revised UFOC Item 20 to Part 436.1(a)(16), reduce the need for extensive earnings claim disclosures or requirements? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

(13) What other amendments to the Rule or its earnings claim requirements would be likely to increase the availability of earnings information in the marketplace? What are the costs and benefits of such an amendment? Are there circumstances in which such an amendment should not apply, or which warrant limitations on its applicability?

B. Inconsistent State Requirements

The Rule currently preempts inconsistent state laws only to the extent of the inconsistency. Note 2 to the Rule provides that a state law or regulation is not inconsistent with the Rule "if the protection such law or regulation affords any prospective franchisee is equal to or greater than that provided by" the Rule. State requirements that provide equal or greater protection, and therefore are not considered inconsistent with the Rule, "include laws or regulations which

require * * * the disclosure of more complete information to the franchisee."

The Commission invites submission of evidence and the views of interested parties concerning whether or not the Commission should amend Note 2 to the Rule. Alternatives the Commission may consider include: (1) Modifying Note 2 provide that state disclosure requirements particularly earnings claim requirements, that are more restrictive or burdensome than the Rule's requirements are inconsistent with the Rule; (2) adding to the Rule a state exemption petition provision similar to § 453.9 of the Commission's Funeral Industry Practices Trade Regulation Rule (16 CFR Part 453) or § 444.5 of the Credit Practices Trade Regulation Rule (16 CFR Part 444); or (3) making no change in Note 2.

The Commission will be particularly interested in receiving evidence and comment on the following questions:

(1) Are there perceived inconsistencies or conflicts among the various state laws and regulations, or their interpretation, that govern the sale of franchises? Are state laws or regulations, or their interpretation, inconsistent or in conflict with the Rule?

(2) To what extent have such inconsistencies or conflicts, if any, imposed costs on the sale of franchises or burdens on the dissemination of material information about franchises, particularly earnings information, to potential investors? Please describe and quantify those costs. Have those costs or burdens, if any, been offset wholly or in part by benefits? Please describe and quantify any benefits, and identify the beneficiaries.

(3) To what extent have such inconsistencies or conflicts, if any, affected the availability of: (a) Material information about franchises, particularly earnings information; or (b) the availability of franchises? Please indicate how and where.

(4) What is the likelihood that inconsistencies or conflicts, if any will continue to exist, increase or decrease?

(5) Are there now any effective public or private mechanisms for resolving any such inconsistencies or conflicts, or are any such mechanisms likely to exist in the near future?

(6) Are the inconsistencies or conflicts, if any, caused by state disclosure requirements or state registration requirements? Does the Commission have the authority to preempt inconsistent conflicting disclosure laws or registration laws? If so, should the Commission exercise that authority?

(7) Should the Rule be amended to prevent inconsistencies or conflicts, if any? If so, how?

IV. Economic Impact

When it promulgated the Franchise Rule, the Commission found that the earnings claim disclosure provisions would benefit consumers by eliminating deceptive claims in the marketplace. It found that the requirements would prevent one of the most frequent abuses in the sale of franchises by insuring that consumers have an opportunity to understand and evaluate claims that could otherwise lead to misguided investment decisions.¹⁸

In fashioning the earnings claim provisions, the Commission attempted to select the least restrictive alternative for providing essential information and protection to the consumer considering a franchise investment. Thus, the Commission allowed for the use of earnings forecasts or projections by new entrants to avoid erection of a regulatory entry barrier to new franchise companies.¹⁹ The Commission also reduced the requirements for use of earnings claims in advertising, in order to minimize their intrusion on advertising space, cost and time.²⁰

The Commission was no less concerned about the potential costs and benefits of parallel state and federal regulation of franchise sales. The Rule was designed to minimize interference with existing state franchise laws, while establishing a uniform nationwide standard for investor protection. In adopting the Final Interpretive Guides to the Rule, the Commission also sought to encourage consistency and uniformity in state and federal disclosure requirements by interpreting the preemption standard so as to permit use of the UFOC for Rule compliance.

Notwithstanding the Commission's determinations based on the previous rulemaking record, the Commission now is interested in examining further the impact of the Rule's earnings claim and preemption requirements, and the impact of possible less burdensome or restrictive alternatives to those requirements. Therefore, the Commission invites written public comment on these issues, with emphasis on the specific issues raised by Section 22 of the Federal Trade Commission Act, 15 U.S.C. 57b-3, and by section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 603.

¹⁸ 43 FR 59684.

¹⁹ 43 FR 59685.

²⁰ 43 FR 59689.

Under section 22 of the Federal Trade Commission Act, when the Commission publishes a notice of a proposed rulemaking, it must issue a preliminary regulatory analysis relating to the proposed rule or amendment. The Commission need not issue a regulatory analysis in connection with an amendment proceeding, however, unless the Commission: (1) Estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local government; or (3) otherwise determines that the amendment will have a significant impact upon persons subject to regulation under the amendment and upon consumers.

Under section 3(a) of the Regulatory Flexibility Act, when the Commission publishes a notice of proposed rulemaking, it also must prepare and make available for public comment an initial regulatory flexibility analysis unless the Chairman certifies that the proposed rule or amendment will not have a significant economic impact on a substantial number of small entities. This analysis must describe the impact of the proposed rule or amendment on small entities. Among other things, the initial regulatory analysis also must contain a description of the small entities to which the proposed rule or amendment will apply and, where feasible, an estimate of the number of such small entities; an estimate of the classes of small entities which will be subject to any reporting, recordkeeping or other compliance requirements of the rule for amendment; and an identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule or amendment.

V. Questions for Comment

The Commission invites written public comment from interested parties with respect to the proposed amendment proceeding, including any suggestions or alternative methods for achieving the objectives discussed in part III, "Amendment Proceeding," *supra*.

The Commission also invites written public comment with respect to all issues raised in part IV, "Economic Impact," *supra*. Specifically, the Commission is interested in receiving written public comment on the impact of the Rule's earnings claim requirements,

and on possible alternatives to those requirements, including, but not limited to, amended requirements adopting the revised UFOC Item 19 provisions or Part 436.1(e) requirements for all earnings claims, abbreviated disclosures or disclosure language, and possible changes in the manner in which required disclosures must be made. The Commission is also interested in receiving written public comment on the impact of the Rule's preemption provisions, and on possible alternatives that would reduce disclosure burdens.

The Commission further invites written public comment concerning what "small businesses" would be affected for purposes of the regulatory flexibility analysis. The Commission is particularly interested in receiving comments concerning what impact, if any, the earnings claims disclosures originally promulgated in the Rule, and the revised UFOC Item 19 or any other alternatives to those requirements, would have on small businesses and on consumers.

In addition, the Commission solicits written public comment concerning what issues, if any, should be designated in the amendment proceeding as disputed issues of material fact.

The Commission will accept written public comment and evidence on all issues and questions raised in this advance notice of rulemaking until April 17, 1989. Comments should be identified as "Comment on Advance Notice of Proposed Rulemaking—Franchise Rule, FTC File No. R511003," and two copies should be submitted if possible.

List of Subjects in 16 CFR Part 436

Franchising, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89-3537 Filed 2-15-89; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 219

Evidence Required for Payment

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulation concerning the types of evidence that a claimant may provide in support of his or her application for benefits under the Railroad Retirement Act. Regulations on this subject are contained in Part 219 of Chapter II of the

Board's regulations. The proposed rule contains provisions implementing legislation enacted in 1981 which added several new categories of beneficiaries including divorced spouses, surviving divorced spouses, and remarried widows and widowers. The proposed rule adds references to these new categories of beneficiaries. In addition, the proposed rule also reflects recent changes in procedures whereby many applicants may use self-administered application forms and submit them by mail. Finally, this proposed action would revise the rules on evidence to make them easier to use and understand.

DATE: Comments must be received by the Secretary to the Board on or before March 20, 1989.

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

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4929 (FTS 386-4929).

SUPPLEMENTARY INFORMATION: The Board's regulations concerning evidence required for payment of benefits, as set forth in 20 CFR Part 219, were issued in February 1982 and do not cover certain categories of beneficiaries added to the railroad retirement program by the Omnibus Budget Reconciliation Act of 1981.

The Board proposes to remove family relationship definitions from Part 219 (§§ 219.15(a)-219.18(a), 219.23(a), 219.24(a), and 219.30 of the regulations) and transfer them to a proposed Part 222. The sections in proposed Part 219, Subpart A, General Evidence Requirements, have been reorganized and new §§ 219.16(b) and 219.9 have been added.

The Board proposes to transfer sections on marriage from Part 219 Subpart B to Part 219 Subpart C, to change the title of Subpart C to "Evidence of Relationship", to transfer the section on "Evidence of relationship of a person other than a parent or child" from Subpart D to Subpart C, and to transfer sections on school attendance from Subpart C to Subpart D. For easier reading and understanding, the Board proposes to divide a number of sections in Subparts C and D into "When evidence * * * is required" and "Evidence to prove * * *" sections (in the proposed revision, see §§ 219.22 and 219.23, 219.30 and 219.31, 219.34-219.37, 219.42 and 219.43, 219.50 and 219.51, 219.52 and 219.53, 219.54 and 219.55, 219.56 and 219.57, 219.58 and 219.59, 219.60 and 219.61, 219.62 and 219.63, and

219.64 and 219.65). New §§ 219.64 and 219.65 are being added.

The Board proposes to change the items listed in the "Types of evidence to prove age" section (§ 219.11 of the current regulation and § 219.21 of proposed Part 219) regarding the following evidence:

Hospital birth record or certificate;
Selective service registration record;
Census record; and Marriage record.

The proposed changes add hospital birth record or certificate, World War II selective service registration record, and marriage record to the list and would give a census record a lower evidentiary value than the World War II selective service registration record. The types of evidence that would be added to the list were previously considered when submitted, but the Board is now proposing to give them a higher value than they received when they were not listed in this section.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with this rule have been approved by the Office of Management and Budget.

In order to enable users to check the completeness, accuracy, and reasoning behind these proposed revisions to the regulations, Derivation and Distribution Tables follow:

DERIVATION TABLE

New section and name	Current section and name
Part 219—Evidence required for payment	Part 219—Evidence required for payment
Subpart A—General Evidence Requirements	
219.1 Introduction.....	219.1 Introduction
219.2 Definitions.....	219.2 Definitions.
219.3 When evidence is required.....	219.5 Failure to furnish requested evidence.
(a) To provide initial eligibility.....	(a) Evidence to prove initial eligibility.
(b) To prove continued entitlement.....	(b) Evidence to prove continued entitlement.
219.4 Who is responsible for furnishing evidence.....	219.3 Who is responsible for furnishing evidence.
(a) Applicant or representative responsible.....	First sentence, 219.3.
(b) What to do when required evidence will be delayed.....	219.5(c) Failure to furnish requested evidence—What to do when required evidence will be delayed.
219.5 Where and how to provide evidence.....	219.4 When and where to furnish evidence.
(a) When Board office is accessible.....	219.4, second paragraph, third sentence and 219.3, second sentence.
(b) When Board office is not accessible.....	219.4, second paragraph, fourth and fifth sentences.
219.6 Original records or copies as evidence.....	219.6 Original records or copies as evidence.
(a) General.....	(a) General.
(b) Foreign language documents.....	219.3 Who is responsible for furnishing evidence—third sentence.
(c) Certified copies of original records.....	219.6(b) Certified copies of original records.
219.7 How the Board decides what is convincing evidence.....	219.7 How the Board decides what is convincing evidence.
(a) * * *	(a) * * *
(b) * * *	(b) * * *
(c) * * *	(c) * * *
(d) * * *	(d) * * *
(e) * * *	(e) * * *
(f) * * *	(f) * * *
219.8 Preferred evidence and other evidence.....	219.8 Preferred evidence and other evidence.
(a) Preferred evidence.....	First two sentences.
(b) Other evidence.....	Next four sentences.
(c) Board decision.....	Last sentence.
219.9 Evidence, information, and records filed with the Board.....	219.3 Who is responsible for furnishing evidence—fourth and fifth sentences only.
Subpart B—Evidence of Age and Death	
219.20 When evidence of age is required.....	219.10 When evidence of age is required.
219.21 Types of evidence to prove age.....	219.11 Types of evidence to prove age.
(a) Preferred evidence.....	(a) Preferred evidence.
(b) Other evidence of age.....	(b) Other evidence of age—four items changed.
219.22 When evidence of death is required.....	219.12 Evidence to prove death.
(a) When evidence of employee's death is required. First sentence.....	(a) When evidence of the employee's death is required.
(b) When evidence to prove death of other persons is required.....	(b) When evidence to prove death of other persons is required.
219.23 Evidence to prove death.....	219.12 Evidence to prove death.
(a) Preferred evidence.....	(a)(1) Preferred evidence of death.
(b) Other evidence of death.....	(a)(2) Other evidence of death.
219.24 Evidence of presumed death.....	219.13 Evidence of presumed death.
(a) * * *	(a) * * *
(b) * * *	(b) * * *
(c) * * *	(c) * * *
Subpart C—Evidence of Relationship	
219.30 When evidence of marriage is required.....	219.14 When evidence of marriage is required.
(a) When application filed for benefits.....	First two sentences.
(b) State law.....	Third sentence.
(c) Types of evidence.....	Fourth sentence.
219.31 Evidence of a valid ceremonial marriage.....	219.15 Evidence of valid ceremonial marriage.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence of a ceremonial marriage.....	(c) Other evidence of a ceremonial marriage.
219.32 Evidence of a common-law marriage.....	219.16 Evidence of a common-law marriage.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence of a common-law marriage.....	(c) Other evidence of a common-law marriage

DERIVATION TABLE—Continued

New section and name	Current section and name
Part 219—Evidence required for payment	Part 219—Evidence required for payment
219.33 Evidence of a deemed valid marriage.....	219.17 Evidence of a deemed valid marriage.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence of a deemed valid marriage.....	(c) Other evidence of a deemed valid marriage.
219.34 When evidence that a marriage has ended is required.....	219.18(a)—Evidence that a marriage has ended. When evidence is required.
219.35 Evidence that a marriage has ended.....	219.18 Evidence that a marriage has ended.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence that a marriage has ended.....	(c) Other evidence that a marriage has ended.
219.36 When evidence of a parent or child relationship is required.....	219.20 When evidence of a parent or child relationship is required.
(a) When parent or child applies.....	First sentence.
(b) When spouse with child in care applies.....	Second sentence.
(c) Evidence required depends on relationship.....	Third sentence.
219.37 Evidence of natural parent or child relationship.....	219.21 Evidence of natural parent or child relationship.
(a) Preferred evidence.....	(a) Preferred evidence.
(b) Other evidence of parent or child relationship.....	(b) Other evidence of parent or child relationship.
219.38 Evidence of stepparent or stepchild relationship.....	219.22 Evidence of stepparent or stepchild relationship.
219.39 Evidence of relationship by legal adoption—parent or child.....	219.33 Evidence of relationship by legal adoption—parent or child.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence of legal adoption.....	(c) Other evidence of legal adoption.
219.40 Evidence of relationship by equitable adoption—child.....	219.24 Evidence of relationship by equitable adoption.
(a) Preferred evidence.....	(b) Preferred evidence.
(b) Other evidence.....	(c) Other evidence.
219.41 Evidence of relationship of grandchild or stepgrandchild.....	219.25 Evidence of relationship of grandchild or stepgrandchild.
219.42 When evidence of child's dependency is required.....	219.26 Evidence of a child's dependency.—(a) When evidence of a child's dependency is required.
219.43 Evidence of child's dependency.....	219.26 Evidence of a child's dependency.
(a) When the dependency requirement must be met.....	(b) When the dependency requirement must be met.
(b) Natural or adopted.....	(c) Natural or adopted.
(c) Stepchild.....	(d) Stepchild.
(d) Grandchild or stepgrandchild.....	(e) Grandchild or stepgrandchild.
219.44 Evidence of relationship of a person other than a parent or child.....	219.35 Evidence of relationship of a person other than a parent or child.
(a) Claimants are relatives other than child or parent.....	First sentence.
(b) Evidence required depends on benefit and relationship.....	Second sentence.
(c) More than one eligible and claimants agree on relationship.....	Third sentence with added explanation.

Subpart D—Other Evidence Requirements

219.50 When evidence of "living with" is required—New.....	219.30 Evidence to prove "living with".
219.51 Evidence to prove "living with".....	
(a) * * * (new).....	
(b) * * * (new).....	
(c) * * * (new).....	
(d) * * *.....	
219.52 When evidence of having a child in care is required.....	219.33 Evidence of having a child in care.—(b) When evidence of having a child in care is required.
219.53 Evidence of having a child in care.....	219.33 Evidence of having a child in care.
(a) Preferred evidence of having a child in care.....	(c) Preferred evidence of having a child in care.
(b) Other evidence.....	(d) Other evidence.
219.54 When evidence of school attendance is required.....	219.27 Evidence of school attendance for child age 18 or older—first paragraph.
219.55 Evidence of school attendance for child age 18.....	219.27 Evidence of school attendance for child age 18 or older.
(a) * * *.....	(a) * * *.....
(b) * * *.....	(b) * * *.....
219.56 When evidence of a parent's support is required.....	219.31 Evidence of a parent's support.
(a) * * *.....	First sentence.
(b) * * * New.....	
219.57 Evidence of a parent's support.....	219.31 Evidence of a parent's support.
(a) * * *.....	(a) * * *.....
(b) * * *.....	(b) * * *.....
(c) * * *.....	(c) * * *.....
219.58 When evidence regarding payment of burial expenses is required.....	219.34 Evidence of responsibility for or payment of burial expenses.—(a) When evidence of burial expenses is required.
219.59 Evidence of responsibility for or payment of burial expenses.....	219.34 Evidence of responsibility for or payment of burial expenses.
(a) * * *.....	(b) Type of evidence required.
(b) * * *.....	(1) * * *.....
	(2) * * *.....
219.60 When evidence of the employee's permanent home is required.....	219.36 Evidence of where the employee had a permanent home.
(a) * * *.....	(a) When evidence of the employee's permanent home is required.
(b) * * *.....	(1) * * *.....
	(2) * * *.....
219.61 Evidence of where the employee had a permanent home.....	219.36 Evidence of where the employee had a permanent home.
(a) * * *.....	(b) What evidence is required.
(b) * * *.....	(1) * * *.....
	(2) * * *.....
219.62 When evidence of "good cause" is required.....	219.37 Evidence of "good cause".
(a) * * *.....	First paragraph.
(b) * * *.....	(a) When evidence of "good cause" is required.
219.63 What evidence is required to establish "good cause".....	219.37 Evidence of "good cause".
(a) * * *.....	(b) What evidence is required to establish "good cause".
	(1) * * *.....

DERIVATION TABLE—Continued

New section and name	Current section and name
Part 219—Evidence required for payment	Part 219—Evidence required for payment
(b) * * *	(2) * * *
219.64 When evidence may be required for other reasons.—New.	
219.65 Other types of evidence that may be required.—New.	

DISTRIBUTION TABLE

Current section and name	New section and name
219.1 Introduction—except "under Title XVIII of the Social Security Act."	219.1 Introduction.
219.2 Definitions—except in "Benefits", "benefits, and in "Eligible", "If an annuity, a lump sum or a benefit under section 202 of the Social Security Act."	219.2 Definitions.
219.3 Who is responsible for furnishing evidence.	219.4 Who is responsible for furnishing evidence.
• First sentence.	(a) Applicant or representative responsible.
• Second sentence.	219.5 Where and how to provide evidence.
• Third sentence.	(a) When Board office is accessible.
• Fourth and fifth sentences, except "Section 13 of".	219.6 Original records or copies as evidence.
219.4 When and where to furnish evidence.	(b) Foreign-language documents.
First paragraph.	219.9 Evidence, information, and records filed with the Board.
Second paragraph, first sentence.	219.3 When evidence is required.
Second paragraph, second sentence.	(a) To prove initial eligibility.
Second paragraph, third sentence, except "persons".	(b) To prove continued entitlement.
Second paragraph, fourth sentence, except "Persons".	Delete.
219.5 Failure to furnish requested evidence.	219.5 Where and how to provide evidence.
(a) Evidence to prove initial eligibility—except "benefits".	(a) When Board office is accessible.
(b) Evidence to prove continued entitlement.	(b) When Board office is not accessible.
(c) What to do when required evidence will be delayed.	219.3 When evidence is required.
219.6 Original records or copies as evidence.	(a) To prove initial eligibility.
(c) Uncertified copies or original records.	(b) To prove continued entitlement.
219.7 How the Board decides what is convincing evidence.	219.4 Who is responsible for furnishing evidence.
219.8 Preferred evidence and other evidence—except "§ 219.11(a), § 219.12(a)(1), § 219.15(b), § 219.16(b), § 219.17(b), § 219.18(b), § 219.21(a), § 219.23(b), § 219.24(b) or § 219.33(c)".	(b) What to do when required evidence will be delayed.
219.10 When evidence of age is required.	219.6 Original records or copies as evidence.
219.11 Types of evidence to prove age.	Delete.
219.12 Evidence to prove death.	219.7 How the Board decides what is convincing evidence.
(a) When evidenced of the employee's death is required.	219.8 Preferred evidence and other evidence.
(1) Preferred evidence of death.	219.20 When evidence of age is required.
(2) Other evidence of death.	219.21 Types of evidence to prove age.
(b) When evidence to prove death of other persons is required.	219.22 When evidence of death is required.
219.13 Evidence of presumed death.	(a) When evidence of the employee's death is required.
(d)	219.23 Evidence to prove death.
219.14 When evidence of marriage is required.	(a) Preferred evidence.
219.15 Evidence of a valid ceremonial marriage.	(b) Other evidence of death.
(a) Definition of valid "ceremonial marriage."	219.22 When evidence of death is required.
(b) Preferred evidence.	(b) When evidence to prove death of other persons is required.
(c) Other evidence of a ceremonial marriage.	219.24 Evidence of presumed death.
219.16 Evidence of a common-law marriage.	Delete.
(a) Definition of a "common-law marriage."	219.30 When evidence of marriage is required.
(b) Preferred evidence.	219.31 Evidence of a valid ceremonial marriage.
(c) Other evidence of common-law marriage.	(a) Preferred evidence.
219.17 Evidence of a deemed valid marriage.	(b) Other evidence of a ceremonial marriage.
(a) Definition of "deemed valid marriage."	219.32 Evidence of a common-law marriage.
(b) Preferred evidence.	(a) Preferred evidence.
(c) Other evidence of a deemed valid marriage.	(b) Other evidence of common-law marriage
219.18 Evidence that a marriage has ended.	219.33 Evidence of a deemed valid marriage.
(a) When evidence is required.	(a) Preferred evidence.
(b) Preferred evidence.	(b) Other evidence of a deemed valid marriage
(c) Other evidence that a marriage has ended.	219.34 When evidence that a marriage has ended is required.
219.20 When evidence of a parent or child relationship is required.	219.35 Evidence that a marriage has ended.
219.21 Evidence of a natural parent or child relationship.	(b) evidence that a marriage has ended.
219.22 Evidence of stepparent or stepchild relationship.	219.36 When evidence of a parent or child relationship is required.
219.23 Evidence of relationship by legal adoption—parent or child.	219.37 Evidence of a natural parent or child relationship.
(a) Definition of legally adopted child.	219.38 Evidence of stepparent or stepchild relationship.
(b) Preferred evidence.	222.33 Determination of relationship resulting from legal adoption.
(c) Other evidence of legal adoption.	219.39 Evidence of relationship by legal adoption—parent or child.
219.24 Evidence of relationship by equitable adoption.	(a) Preferred evidence.
(a) Definition.	(b) Other evidence of legal adoption.
(b) Preferred evidence.	222.34 Determination of relationship resulting through equitable adoption.
	219.40 Evidence of relationship by equitable adoption—child.
	(a) Preferred evidence.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
(c) Other evidence.	(b) Other evidence.
219.25 Evidence of relationship of grandchild or stepgrandchild.	219.41 Evidence of relationship of grandchild or stepgrandchild.
219.26 Evidence of a child's dependency.	219.42 When evidence of child's dependency is required.
(a) When evidence of a child's dependency is required.	219.43 Evidence of child's dependency.
(b) When the dependency requirement must be met.	(a) When the dependency requirement must be met.
(c) Natural or adopted.	(b) Natural or adopted.
(d) Stepchild.	(c) Stepchild.
(e) Grandchild or stepgrandchild.	(d) Grandchild or stepgrandchild.
219.27 Evidence of school attendance for child age 18 or older.	219.54 When evidence of school attendance is required.
First paragraph, first two sentences, except "or older" and "twice yearly".	219.55 Evidence of school attendance for child age 18.
First paragraph, third sentence and.	(a) * * *
(a) * * *	(b) * * *
(b) * * *	
219.30 Evidence of "living with".	222.15 When spouse is living with employee.
(a) Definition of "living with"—except last paragraph.	219.51 Evidence to prove "living with".
Final paragraph.	219.56 When evidence of a parent's support is required.
219.31 Evidence of a parent's support.	(a)
First sentence.	219.57 Evidence of a parent's support.
First paragraph, second and third sentences.	(a) * * *
(a) * * *	(1) * * *
(b) * * *	(2) * * *
(c) * * *	(c) * * *
219.32 [Reserved]	Deleted.
219.33 Evidence of having a child in care.	222.17 "Child in care" when child is living with the spouse or widow or widower.
(a) Definition.	219.52 When evidence of having a child a care is required.
(b) When evidence of having a child in care is required.	219.53 Evidence of having a child in care.
(c) Preferred evidence of having a child in care.	(a) Preferred evidence of having a child in care.
(d) Other evidence.	(b) Other evidence.
219.34 Evidence of responsibility for or payment of burial expenses.	219.58 When evidence regarding payment of burial expenses is required.
(a) When evidence of burial expenses is required	219.59 Evidence of responsibility for or payment of burial expenses.
(b) Types of evidence required.	(a) * * *
(1) * * *	(b) * * *
(2) * * *	
219.35 Evidence of relationship of a person other than a parent or child.	219.44 Evidence of relationship of a person other than a parent or child.
	(a) * * *
	(b) * * *
	(c) First sentence.
219.36 Evidence of where the employee had a permanent home.	219.60 When evidence of the employee's permanent home is required.
(a) When evidence of the employee's permanent home is required.	(a) * * *
(1) * * *	(b) * * *
(2) * * *	
(b) What evidence is required.	219.61 Evidence of where the employee had a permanent home.
(1) * * *	(a) * * *
(2) * * *	(b) * * *
219.37 Evidence of "good cause".	219.62 When evidence of "good cause" is required.
Introductory paragraph.	(a) * * *
(a) When evidence of "good cause" is required.	(b) * * *
(b) What evidence is required to establish "good cause".	219.63 What evidence is required to establish "good cause".
(1) * * *	(a) * * *
(2) * * *	(b) * * *

List of Subjects in 20 CFR Part 219

Railroad employees, Railroad retirement, Railroads.

Part 219 of Title 20 of the Code of Federal Regulations is revised to read as follows:

PART 219—EVIDENCE REQUIRED FOR PAYMENT

Subpart A—General Evidence Requirements

- Sec.
- 219.1 Introduction.
- 219.2 Definitions.
- 219.3 When evidence is required.
- 219.4 Who is responsible for furnishing evidence.

- Sec.
- 219.5 Where and how to provide evidence.
- 219.6 Original records or copies as evidence.
- 219.7 How the Board decides what is convincing evidence.
- 219.8 Preferred evidence and other evidence.
- 219.9 Evidence, information, and records filed with the Board.

Subpart B—Evidence of Age and Death

- 219.20 When evidence of age is required.
- 219.21 Types of evidence to prove age.
- 219.22 When evidence of death is required.
- 219.23 Evidence to prove death.
- 219.24 Evidence of presumed death.

Subpart C—Evidence of Relationship

- 219.30 When evidence of marriage is required.

- Sec.
- 219.31 Evidence of a valid ceremonial marriage.
- 219.32 Evidence of a common-law marriage.
- 219.33 Evidence of a deemed valid marriage.
- 219.34 When evidence that a marriage has ended is required.
- 219.35 Evidence that a marriage has ended.
- 219.36 When evidence of a parent or child relationship is required.
- 219.37 Evidence of natural parent or child relationship.
- 219.38 Evidence of stepparent or stepchild relationship.
- 219.39 Evidence of relationship by legal adoption—parent or child.
- 219.40 Evidence of relationship by equitable adoption—child.
- 219.41 Evidence of relationship of grandchild or stepgrandchild.

Sec.

- 219.42 When evidence of child's dependency is required.
 219.43 Evidence of child's dependency.
 219.44 Evidence of relationship of a person other than a parent or child.

Subpart D—Other Evidence Requirements

- 219.50 When evidence of "living with" is required.
 219.51 Evidence to prove "living with".
 219.52 When evidence of having a child in care is required.
 219.53 Evidence of having a child in care.
 219.54 When evidence of school attendance is required.
 219.55 Evidence of school attendance for child age 18.
 219.56 When evidence of a parent's support is required.
 219.57 Evidence of a parent's support.
 219.58 When evidence regarding payment of burial expenses is required.
 219.59 Evidence of responsibility for or payment of burial expenses.
 219.60 When evidence of the employee's permanent home is required.
 219.61 Evidence of where the employee had a permanent home.
 219.62 When evidence of "good cause" is required.
 219.63 That evidence is required to establish "good cause".
 219.64 When evidence may be required for other reasons.
 219.65 Other types of evidence that may be required.

Authority: 45 U.S.C. 231f.

Subpart A—General Evidence Requirements**§ 219.1 Introduction.**

(a) As described in Parts 216 (Eligibility for an Annuity), 234 (Lump-Sum Payments), and 222 (Family Relationships), certain requirements must be met before benefits may be paid under the Railroad Retirement Act. This part contains the basic rules for evidence that is required to support a claimant's claim for monthly or lump-sum benefit payments under the Railroad Retirement Act.

(b) Part 219 describes when evidence is required and what types of documents can be used as evidence. Part 222 defines and explains family relationships for which evidence requirements are stated in Part 219. Special evidence requirements for disability annuities are found in Part 220 of this chapter.

§ 219.2 Definitions.

As used in this subpart—

"Annuity" means a recurring payment due an entitled person for a calendar month and made to him or her on the first day of the following month.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Benefit" means any employee annuity, spouse annuity, survivor annuity, or lump-sum payment under the Railroad Retirement Act.

"Claimant" means the person who files an application for an annuity or lump-sum payment for himself, herself, or some other person.

"Convincing evidence" means one or more pieces of evidence that proves to the satisfaction of the Board that an individual meets a requirement for eligibility for benefits. See § 219.7 for guides the Board uses in deciding whether evidence is convincing.

"Eligible" means that a person meets all of the requirements for payment of benefits but has not yet applied therefor.

"Entitled" means that a person has applied for and has proved his or her right to payment of benefits.

"Evidence" means any record or document or testimony that helps to show whether a person is eligible for benefits. It may also be used to establish whether the person is still entitled to benefits.

"Representative" means a person who acts on behalf of a claimant in regard to his or her claim for benefits from the Board and in the presentation of evidence to support the claim.

§ 219.3 When evidence is required.

(a) *To prove initial eligibility.* The Board will ask for evidence to prove a claimant is eligible for benefits when he or she applies for benefits. Usually the Board will ask the claimant to furnish specific kinds of evidence or information by a certain date to prove initial eligibility for benefits. If evidence or information is not received by that date, the Board may decide that the claimant is not eligible for benefits and will deny his or her application.

(b) *To prove continued entitlement.* After a claimant establishes entitlement to an annuity, the Board may ask that annuitant to produce by a certain date information or evidence needed to decide whether he or she may continue to receive an annuity or whether the annuity should be reduced or stopped. If the information is not received by the date specified, the Board may decide that the person is no longer entitled to benefits or that his or her annuity should be stopped or reduced.

§ 219.4 Who is responsible for furnishing evidence.

(a) *Claimant or representative responsible.* When evidence is required to prove a person's eligibility for or right to continue to receive annuity or lump-sum payments, that claimant or his or her representative is responsible for

obtaining and submitting the evidence to the Board.

(b) *What to do when required evidence will be delayed.* When the required evidence cannot be furnished within the specified time, the claimant or representative who was asked to furnish the evidence or information should notify the Board and explain why there will be a delay. If the delay is caused by illness, failure to receive the information from another source, or a similar situation, the claimant will be allowed a reasonable time to secure the evidence or information. If the information is not received within a reasonable time as determined by the Board, the claimant or representative who was asked to furnish the evidence or information will be notified of the effect that his or her failure to furnish the evidence or information will have on the claimant's eligibility to receive or continue to receive payments.

§ 219.5 Where and how to provide evidence.

(a) *When Board office is accessible.* A claimant or representative should give his or her evidence to an employee of the Railroad Retirement Board office where he or she files the application. An employee of the Board will tell the claimant or representative what is needed and how to get it.

(b) *When Board office is not accessible.* A claimant who lives in an area where there is no Board office or who is unable to travel to a Board office may send evidence to the Board office nearest to where the claimant lives. A claimant who lives outside the United States may take evidence to the American embassy or consulate or other Foreign Service Office nearest to where he or she lives or send it to the headquarters of the Board.

§ 219.6 Original records or copies as evidence.

(a) *General.* A claimant or an annuitant may be asked to show an original document or record as evidence to prove eligibility for or continued entitlement to payments. Where possible, a Board employee will make a photocopy or transcript of these original documents or records and return the original documents to the person who furnished them. A person may also submit certified copies of original records and, in some cases, uncertified birth notifications. These types of records are described below in this section.

(b) *Foreign-language documents.* If the evidence submitted is a foreign-language record or document, the Board may

require that the record be translated. An acceptable translation includes, but is not limited to, a translation certified by a United States consular official or employee of the Department of State authorized to certify evidence or by an employee of the Social Security Administration.

(c) *Certified copies of original records.* The Board will accept copies of original records or extracts from records if they are certified as true and exact copies of the original by—

(1) The official custodian of the record;

(2) A Veterans' Administration employee, if the evidence was given to that agency to obtain veterans benefits;

(3) A Social Security Administration employee, if the evidence was given to that agency to obtain social security benefits;

(4) A United States Consular Officer, an employee of the Department of State, or an employee of the Immigration and Naturalization Service authorized to certify evidence received outside the United States; or

(5) An employee of a state agency or state welfare office authorized to certify copies of original records in the agency's or office's files.

§ 219.7 How the Board decides what is convincing evidence.

When the Board receives evidence, a Board representative examines it to see if it is convincing evidence. If it is, no other evidence is needed. In deciding whether the evidence is convincing, the Board representative decides whether—

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information contained in the evidence was given under oath, or in the presence of witnesses, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time the event took place or shortly after;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence, including existing Board records.

§ 219.8 Preferred evidence and other evidence.

(a) *Preferred evidence.* When a claimant submits the type of evidence shown as preferred in Subparts B and C of this part, the Board will generally find it is convincing evidence. This means

that unless there is information in the Board's records that raises a doubt about the evidence, other evidence to prove the same fact will not be needed.

(b) *Other evidence.* If preferred evidence is not available, the Board will consider any other evidence a claimant furnishes. If the other evidence consists of several different records or documents which all show the same information, the Board may determine that it is convincing evidence even though it is not preferred evidence. If the other evidence is not convincing by itself, the claimant will be asked to submit additional evidence. If the additional evidence shows the same information all the evidence considered together may be convincing evidence.

(c) *Board decision.* When the Board has convincing evidence of the facts that must be proven, or when it is clear that the evidence provided does not prove the necessary facts, the Board will make a formal decision about the applicant's rights to benefits.

§ 219.9 Evidence, information, and records filed with the Board.

The Railroad Retirement Act provides criminal penalties for any persons who misrepresent the facts or make false statements to obtain payments for themselves or someone else. All evidence and documents given to the Board are kept confidential and are not disclosed to anyone but the person who submitted them, except under the rules described in Part 200 of this chapter.

Subpart B—Evidence of Age and Death

§ 219.20 When evidence of age is required.

(a) Evidence of age is required when an employee applies for an annuity under the Railroad Retirement Act or for Medicare coverage under Title XVIII of the Social Security Act.

(b) Evidence of age is also required from a person who applies for a spouse's or divorced spouse's, widow's, widower's, surviving divorced spouse's, parent's, or child's annuity under the Railroad Retirement Act, or for Medicare coverage under Title XVIII of the Social Security Act.

§ 219.21 Types of evidence to prove age.

(a) *Preferred evidence.* The best type of evidence to prove a claimant's age is—

(1) A birth certificate recorded before age 5;

(2) A church record of birth or baptism recorded before age 5; or

(3) Notification of registration of birth made before age 5.

(b) *Other evidence of age.* If an individual cannot obtain preferred evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be one or more of the following records, with the records of highest value listed first:

(1) Hospital birth record or certificate.

(2) Physician's or midwife's birth record.

(3) Bible or other family record.

(4) Naturalization record.

(5) Military record.

(6) Immigration record.

(7) Passport.

(8) Selective service registration record.

(9) Census record.

(10) School record.

(11) Vaccination record.

(12) Insurance record.

(13) Labor union or fraternal record.

(14) Employer's record.

(15) Marriage record.

(16) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

(Approved by the Office of Management and Budget under Control No. 3220-0106)

§ 219.22 When evidence of death is required.

(a) *When evidence of the employee's death is required.* Evidence to prove the employee's death is always required for payment of any type of survivor annuity or lump-sum payment based on the deceased employee's record. See Parts 216 and 234 for types of survivor payments.

(b) When evidence to prove death of other persons is required. Evidence to prove the death of persons other than the employee is required when—

(1) A claimant, who is eligible for survivor benefits, dies after the employee;

(2) A residual lump sum (see Part 234 of this chapter) is payable and a person whom the employee named to receive all or part of this payment dies before the employee, or such person dies after the employee but before receiving his or her share of the benefit; or

(3) There is reasonable doubt of the death of—

(i) Any person who, if alive, has priority over the applicant;

(ii) Any spouse whose death is alleged to have ended a previous marriage, if a later marriage in question cannot be presumed valid under state law; or

(iii) Any person the termination of whose entitlement would increase payments to other entitled persons.

§ 219.23 Evidence to prove death.

(a) *Preferred evidence of death.* The best evidence of a person's death is—

(1) A certified copy of or extract from the public record of death, or verdict of the coroner's jury of the state or community where death occurred; or a certificate or statement of death issued by a local registrar or public health official;

(2) A signed statement of the funeral director, attending physician, or official of an institution where death occurred;

(3) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States or of a state; or

(4) If death occurred outside the United States, an official report of death by a United States Consul or other authorized employee of the State Department, or a certified copy of the public record of death in a foreign country.

(b) *Other evidence of death.* If the preferred evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain the reason therefor and to submit other convincing evidence, such as sworn statements of at least two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place, and cause of death.

(Approved by the Office of Management and Budget under Control No. 3220-0077)

§ 219.24 Evidence of presumed death.

When a person cannot be proven dead but evidence of death is needed, the Board may presume he or she died at a certain time if the Board receives the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a missing person is presumed to be dead as stated in Federal law (5 U.S.C. 5565). Unless other evidence is submitted showing an actual date of death, the Board will use the date on which the person was reported missing as the date of death.

(b) Signed statements by those in a position to know the facts and other records which show that the person has been absent from his or her residence for no apparent reason and has not been heard from for at least 7 years. If there is no evidence available that that person continued in life after the date of disappearance, the Board will use as the date of death the date the person disappeared.

(c) When a person has been missing for less than 7 years but may be presumed dead due to drowning or common disaster (fire, accident, etc.), signed statements from the applicant and individuals who know the circumstances surrounding the occurrence leading to the person's disappearance. The best evidence is statements from individuals who witnessed the occurrence or saw the missing person at the scene of the occurrence shortly before it happened.

Subpart C—Evidence of Relationship

§ 219.30 When evidence of marriage is required.

(a) *When an application is filed for benefits.* Documentary evidence of marriage is required when an individual files for a monthly annuity, lump-sum death payment, residual lump sum, or Medicare coverage, as the wife, husband, widow, widower, divorced spouse or surviving divorced spouse, or stepparent of the employee. A claimant may also be required to submit evidence of another person's marriage when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act.

(b) *State law.* In deciding whether the marriage to the employee is valid or not, in a case where the employee is living, the Board will follow the law of the state where the employee had a permanent home when the applicant filed an application; in a case where the employee is dead, the Board will follow the law of the state where the employee had a permanent home when he or she died.

(c) *Types of evidence.* What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a common law marriage, or a marriage that can be deemed to be valid.

§ 219.31 Evidence of a valid ceremonial marriage.

(a) *Preferred evidence.* Preferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of a church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(b) *Other evidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state the reason therefor in writing and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence, such as the sworn statements of at least two persons who have direct knowledge of the marriage, preferably eyewitnesses to the marriage ceremony.

(Approved by the Office of Management and Budget under Control No. 3220-0140)

§ 219.32 Evidence of a common-law marriage.

(a) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wife is unable to get from a relative. Each signed statement should show—

(i) That the husband and wife believed they were married;

(ii) The basis for this belief; and

(iii) That the husband and wife have presented themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall furnish a signed statement and signed statements from two blood relatives of the dead spouse. The surviving spouse's statement should show that he or she and the dead spouse believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife. The statements from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife believed themselves to be married, the basis for this belief, and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (a) (1), (2) and (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage;

(ii) After the impediment was removed, the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(b) *Other evidence of common-law marriage.* When preferred evidence of a common-law marriage cannot be obtained, the claimant will be asked to explain the reason therefor and to furnish other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220-0021)

§ 219.33 Evidence of a deemed valid marriage.

(a) *Preferred evidence.* Preferred evidence of a deemed valid marriage is—

(1) Evidence of a ceremonial marriage as described in § 219.31;

(2) If both the employee and spouse are alive, the spouse's signed statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid; or if the employee is dead, the widow or widower's signed statement to that effect;

(3) If required to remove a reasonable doubt, the signed statements of other persons who have information about what the parties knew about any previous marriage or other facts showing whether the parties went through the marriage ceremony in good faith; and

(4) Evidence that the parties were living in the same household when the employee applied for payments; or, if the employee is dead, when he or she died. See § 219.51 for the evidence required to demonstrate living in the same household.

(b) *Other evidence of a deemed valid marriage.* If preferred evidence of a deemed valid marriage cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence of the marriage.

(Approved by the Office of Management and Budget under Control No. 3220-0140)

§ 219.34 When evidence that a marriage has ended is required.

Evidence of how a previous marriage ended may be required to determine whether a later marriage is valid. If a widow or widower remarried after the employee's death and that marriage was annulled, evidence of the annulment is required. If the claimant is a divorced spouse or surviving divorced spouse,

evidence to prove a final or absolute divorce from the employee may be required.

§ 219.35 Evidence that a marriage has ended.

(a) *Preferred evidence.* Preferred evidence that a marriage has ended is—

(1) A certified copy of the decree of divorce or annulment; or

(2) Evidence of the death (see § 219.23) of a party to the marriage.

(b) *Other evidence that a marriage has ended.* If preferred evidence that the marriage has ended cannot be obtained, the claimant must explain the reason therefor and submit other convincing evidence that the marriage has ended.

(Approved by the Office of Management and Budget under Control Nos. 3220-0021 and 3220-0140)

§ 219.36 When evidence of a parent or child relationship is required.

(a) *When parent or child applies.* A person who applies for a parent's or child's annuity or for Medicare coverage is required to submit evidence of his or her relationship to the deceased employee.

(b) *When individual with child in care applies.* An individual who applies for an annuity because he or she has a child of the employee in care is required to submit evidence of the child's relationship to the employee.

(c) *Evidence required depends on relationship.* The evidence the Board will require depends on whether the person is the employee's natural child, adopted child, stepchild, grandchild, or stepgrandchild; or whether the person is the employee's natural parent or adopting parent.

§ 219.37 Evidence of natural parent or child relationship.

(a) *Preferred evidence.* If the claimant is the natural parent of the employee, preferred evidence of the relationship is a copy of the employee's public or religious birth record. If the claimant is the natural child of the employee, preferred evidence of the relationship is a copy of the child's public or religious birth record.

(b) *Other evidence of parent or child relationship.* (1) When preferred evidence of a parent or child relationship cannot be obtained, the Board may ask the applicant for evidence of the employee's marriage or of the marriage of the employee's parents if that is needed to remove any reasonable doubt of the relationship.

(2) To show that a person is the child of the employee, the person may be asked for evidence that he or she would be able to inherit the employee's

personal property under the law of the state where the employee died or had a permanent home.

(3) In some instances the Board may ask for a signed statement from the employee that a person is his or her natural child, or for a copy of a court order showing that the person has been declared to be the child of the employee, or for a copy of a court order requiring the employee to contribute to the person's support because the person is his or her child, or for any other supporting evidence which may be required in order to establish that the person is the child of the employee.

§ 219.38 Evidence of stepparent or stepchild relationship.

If the claimant is a stepparent or stepchild of the employee, the Board will ask for the evidence described in § 219.37 or § 219.39 which shows the person's natural or adoptive relationship to the employee's husband, wife, widow, or widower. The Board will also ask for evidence of the husband's, wife's, widow's or widower's marriage to the employee. (See §§ 219.30-219.33.)

§ 219.39 Evidence of relationship by legal adoption—parent or child.

(a) *Preferred evidence.* Preferred evidence of legal adoption is—

(1) A copy of the decree or order of adoption, certified by the custodian of the record;

(2) A photocopy of the decree or order of adoption; or

(3) If the widow or widower adopted the child after the employee's death, the evidence described in paragraph (a) (1) or (2) of this section; the widow's or widower's statement as to whether the child was living in the same household with the employee when the employee died (see §§ 219.50 and 219.51); what support, if any, the child was getting from another person or organization; and if the widow or widower had a deemed valid marriage with the employee, evidence of that marriage (see § 219.33).

(b) *Other evidence of legal adoption.* In some states the record of adoption proceedings is sealed and cannot be obtained without a court order. In this event, the Board will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed or a birth certificate issued as a result of the adoption proceeding.

§ 219.40 Evidence of relationship by equitable adoption—child.

(a) *Preferred evidence.* If the claimant is a person who claims to be the equitably adopted child of the employee

(or of the employee's wife, widow, widower, or husband), as defined in Part 222 of this chapter, the Board will ask for evidence of the agreement to adopt if it is in writing. The Board will also ask for written statements from the child's natural parents as well as adopting parents concerning the child's relationship to the adopting parents.

(b) *Other evidence.* If the agreement to adopt was not in writing, the Board will require other convincing evidence about the child's relationship to the adopting parents.

(Approved by the Office of Management and Budget under Control No. 3220-0040)

§ 219.41 Evidence of relationship of grandchild or stepgrandchild.

If the child is the grandchild or stepgrandchild of the employee, the Board will require the kind of evidence described in §§ 219.36-219.38 that shows the child's relationship to his or her parents and his or her parents' relationship to the employee.

§ 219.42 When evidence of child's dependency is required.

Evidence of a child's dependency on the employee is required when—

(a) The employee is receiving an annuity that can be increased under the social security overall minimum (see Part 229 of this chapter) by including a child, grandchild or a spouse who has a child in his or her care;

(b) A wife under age 65 applies for a full spouse annuity because she has a child or a grandchild of the employee in her care; or

(c) A child or someone in behalf of a child applies for a child's annuity based on the deceased employee's record.

§ 219.43 Evidence of child's dependency.

(a) *When the dependency requirement must be met.* Usually the dependency requirement must be met at one of the times shown in Part 222 of this chapter.

(b) *Natural or adopted.* If the child is the employee's natural or adopted child, the Board may ask for the following evidence:

(1) A signed statement by someone who knows the facts that confirms that the child is the natural or adopted child.

(2) If the child was adopted by someone else while the employee was alive but the adoption was annulled, the Board may require a certified copy of the annulment decree or other convincing evidence of the annulment.

(3) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart; and showing what contributions

the employee made to the child's support and how the contributions were made.

(c) *Stepchild.* If the child is the employee's stepchild, the Board may ask for the following evidence:

(1) A signed statement by someone having personal knowledge of the circumstances showing when and where the child lived with the employee and when and why they may have lived apart.

(2) A signed statement by someone having personal knowledge of the circumstances showing what contributions the employee made to the child's support, the child's ordinary living costs and the income and support the child received from any other source during the relevant time as required by § 222.55 of this chapter.

(d) *Grandchild or stepgrandchild.* If the child is the employee's grandchild or stepgrandchild, the Board will require the evidence described in paragraph (c) of this section. The Board will also require evidence of the employee's death or disability.

(Approved by the Office of Management and Budget under Control No. 3220-0099)

§ 219.44 Evidence of relationship of a person other than a parent or child.

(a) *Claimants other than child or parent.* When any person other than a child or parent applies for benefits due because of the employee's death or because of the death of a beneficiary, the Board may ask the claimant for evidence of relationship.

(b) *Evidence required.* The type of evidence required is dependent upon the amount payable and the claimant's relationship to the deceased employee or beneficiary.

(c) *More than one eligible and claimants agree on relationship.* If there is more than one person eligible for benefits, and all eligible persons agree on the relationship of each other eligible person, only one of the persons will be asked to furnish proof of relationship. For example, if brothers and sisters of a deceased employee file applications for the residual lump sum or annuity payments due but unpaid at death, only one of them need file proof of relationship if their applications indicate that there is no dispute as to who are the brothers and sisters of the employee.

Subpart D—Other Evidence Requirements

§ 219.50 When evidence of "living with" is required.

Evidence of "living with" (see Part 222 of this chapter on Family Relationship) is required when—

(a) The employee's spouse applies for a spouse's annuity as a deemed spouse; or

(b) The employee's legal widow or widower applies for as lump-sum death payment, annuity payments due the employee but unpaid at death, or a residual lump-sum death payment on the basis of that relationship, or the employee's deemed widow or widower applies for a widow's or widower's annuity.

§ 219.51 Evidence to prove "living with".

The following evidence may be required:

(a) If the employee is alive, both the employee and his or her spouse must sign a statement that they are living together in the same household when the spouse applies for a spouse's annuity as a deemed spouse.

(b) If the employee is dead, the widow or widower must sign a statement showing whether he or she was living together in the same household with the employee when the employee died.

(c) If the employee and spouse, widow or widower were temporarily living apart, a signed statement is required explaining where each was living, how long the separation lasted, and the reason for separation. If more evidence is required to remove any reasonable doubt about the temporary nature of the separation, the Board may ask for sworn statements of other persons having personal knowledge of the facts or for other convincing evidence.

(d) If the employee and spouse, widow, or widower were not living in the same household, the Board may ask for evidence that the employee was contributing to or under court order to contribute to the support of his or her spouse, widow, or widower. Evidence of contributions or a certified copy of the order for support may be requested. The court order for support must be in effect on the day the spouse applies for a spouse's annuity or, if the employee is dead, the day of the employee's death. This type of evidence does not apply for purposes of establishing a deemed valid marriage. (See Part 222 of this chapter.) A deemed spouse, widow, or widower must furnish evidence as described in paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under Control No. 3220-0030)

§ 219.52 When evidence of having a child in care is required.

A person who applies for a spouse's, widow's or widower's, or surviving divorced spouse's annuity on the basis of caring for a child, or for an increase under the social security overall

minimum guaranty provision based on caring for a child, is required to furnish evidence that he or she has in care an eligible child of the employee as described in Part 222 of this chapter. What evidence the Board will require depends upon whether the child is living with the applicant or with someone else.

§ 219.53. Evidence of having a child in care.

(a) *Preferred evidence of having a child in care.* Preferred evidence of having a child in care is—

(1) If the child is living with the applicant, the claimant's signed statement showing that the child is living with him or her.

(2) If the child is living with someone else—

(i) The claimant's signed statement showing with whom the child is living and why. The claimant must also show when the child last lived with him or her, how long the separation will last, and what care and contributions he or she provides for the child; and

(ii) The signed statement of the person with whom the child is living showing what care the claimant provides and the sources and amounts of support received by the child. If the child is in an institution, an official thereof should sign the statement. A copy of any court order or written agreement showing who has custody of the child should be provided to the Board.

(b) *Other evidence.* If the preferred evidence described in paragraph (a) of this section cannot be obtained, the Board will require other convincing evidence that the applicant has the child in care.

(Approved by the Office of Management and Budget under Control Nos. 3220-0030 and 3220-0042)

§ 219.54. When evidence of school attendance is required.

If a child age 18 applies for payments as a student, the Board will require evidence that the child is attending elementary or secondary school. After the child has started his or her school attendance, the Board may also ask for evidence that he or she is continuing to attend school full time. To be acceptable to the Board, the child must submit the evidence of school attendance within 90 days of the date the evidence is requested by the Board.

§ 219.55. Evidence of school attendance for child age 18.

The child will be asked to submit (on a form furnished by the Board or other form acceptable to the Board) the following evidence:

(a) A signed statement that he or she is attending school full-time and is not being paid by an employer to attend school; and

(b) A statement from an official of the school verifying that the child is attending school full-time. The Board may also accept as evidence a letter of acceptance from the school, receipted bill, or other evidence showing that the child has enrolled or been accepted at that school or is continuing in full-time attendance.

(Approved by the Office of Management and Budget under Control Nos. 3220-0030, 3220-0063, and 3220-0123)

§ 219.56. When evidence of a parent's support is required.

If a person applies for a parent's annuity, the Board will require evidence to show that the parent received at least one-half of his or her support from the employee in the one-year period before—

(a) The employee died; or

(b) The beginning of a period of disability if the employee had a period of disability which did not end before his or her death.

§ 219.57. Evidence of a parent's support.

(a) The Board will require the parent's signed statement showing his or her income, any other sources of support, the amount from each source and his or her expenses during the one-year period.

(b) The Board may also ask the parent for signed statements from other people who know the facts about his or her sources of support.

(c) If the statements described in paragraphs (a) and (b) of this section cannot be obtained, the Board will require other convincing evidence that the parent is receiving one-half of his or her support from the employee.

(Approved by the Office of Management and Budget under Control No. 3220-0099)

§ 219.58. When evidence regarding payment of burial expenses is required.

If a person applies for the lump-sum death payment because he or she is responsible for paying the funeral home or burial expenses of the employee or because he or she has paid some or all of these expenses, the Board will require evidence of such payment.

§ 219.59. Evidence of responsibility for or payment of burial expenses.

The Board will ask for the following evidence:

(a) The claimant's signed statement showing—

(1) That he or she accepted responsibility for the funeral home expenses or paid some or all of these

expenses or other burial expenses; or the name and address of the person who accepted responsibility for or paid these expenses;

(2) Total funeral home expenses and, if necessary, the total of other burial expenses; and if someone else paid part of the expenses, that person's name, address, and the amounts he or she paid;

(3) The amount of cash or property the applicant expects to receive as repayment for any burial expenses he or she paid; and whether anyone has applied for any burial allowance from the Veterans Administration or other governmental agency for these expenses; and

(4) If the claimant is an owner or official of a funeral home, a signed statement from anyone, other than an employee of the home, who helped make the burial arrangements showing whether he or she accepted responsibility for paying the burial expenses.

(b) Unless the claimant is an owner or official of a funeral home, a signed statement from the owner or official of the funeral home which handled the deceased employee's funeral and, if necessary, from those who supplied other burial goods or services which shows—

(1) The name and address of everyone who accepted responsibility for or paid any part of the burial expenses; and

(2) Information which the owner or official of the funeral home and, if necessary, any other supplier has about the expenses and payments described in paragraphs (a)(2) and (a)(3) of this section.

(Approved by the Office of Management and Budget under Control No. 3220-0031)

§ 219.60. When evidence of the employee's permanent home is required.

The Board may ask for evidence to prove where the employee had a permanent home at the time of filing an application or, if earlier, at the time the employee died if—

(a) The claimant is applying for payments as the employee's wife, husband, widow, widower, parent, or child; and

(b) The claimant's relationship to the employee depends upon the laws of the state where the employee had his or her permanent home when his or her wife or husband applied for an annuity or when the employee died.

§ 219.61 Evidence of where the employee had a permanent home.

The Board will ask for the following evidence to establish the employee's permanent home:

(a) The claimant's signed statement showing what the employee considered to be his or her permanent home.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt in establishing the employee's permanent home, evidence of where the employee paid personal property taxes, real estate taxes, or income taxes; or evidence where the employee voted; or other convincing evidence.

§ 219.62 When evidence of "good cause" is required.

The principle of "good cause", as defined in Part 217 of this chapter, is applied by the Board in determining whether to allow an application which is submitted more than two years after the employee's death as acceptable for the lump-sum death payment or for an annuity unpaid at death, or to accept the proof of support required for entitlement to a parent's annuity if such proof is filed more than two years after the employee's death.

§ 219.63 What evidence is required to establish "good cause".

The Board will ask for the following evidence of "good cause":

(a) The claimant's signed statement explaining why he or she did not file the application for lump-sum death payment or annuity unpaid at death or the parent's proof of support within the specified two-year-period.

(b) If the statement in paragraph (a) of this section or other evidence raises a reasonable doubt as to whether there was good cause, other convincing evidence to establish "good cause".

§ 219.64 When evidence may be required for other reasons.

(a) The Board will require evidence of the appointment of a legal representative when—

(1) The employee's estate is entitled to a lump-sum death payment, annuity unpaid at death, or residual lump sum, and an executor or administrator has been appointed for the estate; or

(2) A minor child or incompetent is entitled to an annuity or lump-sum payment and a guardian, trustee, committee, or conservator has been appointed to act in his or her behalf.

(b) The Board will require evidence of an annuitant's earnings when the information that he or she furnished the Board does not agree with the earnings data furnished by the Social Security

Administration or secured from other sources, and the annuitant maintains that the earnings data from the Social Security Administration or from other sources is not correct.

(c) The Board will require evidence to establish the amounts paid as a public service pension, public disability benefit, or worker's compensation to an employee, spouse, widow, or widower when the pension, public disability benefit, or worker's compensation affects the amount of his or her annuity.

(d) The Board will require evidence to reconcile discrepancies between the information furnished by the claimant and information already in the records of the Board, the Social Security Administration, or other public agencies. Such discrepancies may be differences in name, date or place of birth, periods of employment, or other identifying data.

(Approved by the Office of Management and Budget under Control Nos. 3220-0002, 3220-0136, and 3220-0154)

§ 219.65 Other types of evidence that may be required.

(a) The Board may ask for a statement from an employer listing the annuitant's earnings by months and explaining any payments made to the annuitant when he or she was not working.

(b) The Board may ask for copies of award notices from a public agency showing the amounts of periodic payments and the period covered by each payment.

(c) The Board may ask for a statement from the applicant explaining discrepancies and may ask for sworn statements from persons who have personal knowledge of the facts or for any other convincing evidence.

(d) The Board may ask for proof of the court appointment of a legal representative, such as:

(1) Certified copy of letters of appointment;

(2) "Short" certificate;

(3) Certified copy of order of appointment; or

(4) Any official document issued by the clerk or other proper official of the appointing court.

Dated: February 9, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-3602 Filed 2-15-89; 8:45 am]

BILLING CODE 7905-01-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1904

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Central Intelligence Agency

AGENCY: Central Intelligence Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation requires that the Central Intelligence Agency operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive agencies.

DATES: Comments must be received in writing on or before April 17, 1989.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Kathleen B. DeWeese, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505. Copies of this notice will be made available on tape for persons with impaired vision who request them.

FOR FURTHER INFORMATION CONTACT: Kathleen B. DeWeese, (703) 482-5648.

SUPPLEMENTARY INFORMATION: The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Central Intelligence Agency (hereinafter "the Agency"). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States

Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

The substantive nondiscrimination obligations of the Agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR Part 41, the section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

The Agency has proposed a slightly modified version of proposed rules to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended. The purpose of the variation is to assure that the amendment is enforced, as applied to the Central Intelligence Agency, in a manner consistent with the Agency's mission; the National Security Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; and other applicable law. In addition, there are some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See, *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), in which the Court held that the regulations for federally assisted programs did not require a

recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[the] regulations implementing § 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access" *id.* 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Thus, because the Agency interprets the federally assisted regulations to reflect the judicial rulings described earlier, the Agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Executive Order 12291: These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification: The Director of the Central Intelligence Agency certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These regulations apply only to programs or activities conducted by the Central Intelligence Agency.

Section-by-Section Analysis

Section 1904.101 Purpose

Section 1904.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1904.102 Application

The regulation applies to all programs or activities conducted by the Agency. Under this section, a federally conducted program or activity is, in simple terms, anything a federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing Agency operations and those directly administered by the Agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law. Nor shall anything in the regulation be deemed to impair the Director's responsibility for protecting intelligence sources and methods.

Section 1904.103 Definitions

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by

§ 1904.160(a)(1), they also may be necessary to meet other requirements of the regulation. The Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Agency to investigate the complaint. The definition is necessary because the 180 day period for the Agency's investigation (*see* § 1904.170(g)) begins when it receives a complete complaint.

"Director" refers to the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Agency.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute, as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted

programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In those programs, a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Agency. The Agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The Agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in

demonstrating that a modification would result in such an alteration, the Agency must follow the procedures established in §§ 1904.150(a) and 1904.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Director or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Director determines that an action would result in a fundamental alteration, the Agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 1904.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the Agency and not to programs or activities to which it provides Federal financial assistance.

Section 1904.110 Self-evaluation

The Agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 1904.111 Notice

Section 1904.111 requires the Agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 1904.130 General prohibitions against discrimination

Section 1904.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1904.130 establish the general principles for analyzing whether any particular action of the Agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Agency violates a provision in any of the subsequent sections, it will violate one of the general prohibitions found in § 1904.130. If there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) of this section prohibits overt denials of equal treatment of individuals with handicaps. The Agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the program or activity in question. It would be permissible, therefore, to exclude, without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate

commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1904.149–1904.151) and communications (§ 1904.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Agency to develop separate or different aids, benefits, or services if necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only if necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even if separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program or activity that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the Agency's programs or activities. The phrase "criteria or methods of administration" refers to official written Agency policies and to the actual practices of the Agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face,

but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1904.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discriminate on the basis of handicap.

Paragraph (b)(6) prohibits the Agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 1904.103).

In addition, the Agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the Agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the Agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are the programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the Agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Agency must

administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with non-handicapped persons to the fullest extent possible.

Section 1904.140 Employment

Section 1904.140 prohibits discrimination on the basis of handicap in employment by the Agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. U.S. Postal Service*, 742 F.2d 257, 259-260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302-04 (5th Cir. 1981). *Contra McGuinness v. U.S. Postal Service*, 744 F.2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. U.S. Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 1904.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR Part 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 1904.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 1904.149 Program accessibility: Discrimination prohibited

Section 1904.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1904.150 and 1904.151.

Section 1904.150 Program accessibility: Existing facilities

This regulation adopts, with certain modifications, the program-accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57). Thus, § 1904.150 requires that each Agency

program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Agency is not required to make each of its existing facilities accessible (§ 1904.150(a)(1)). However, § 1904.150, unlike 28 CFR 41.57, places explicit limits on the Agency's obligation to ensure program accessibility (§ 1904.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the Agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Department is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1904.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraph (a)(2) and § 1904.160(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "reasonable adjustments in the nature of the benefits being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "changes,"

'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program.' *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Agency of all obligations to individuals with handicaps. Although the Agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is the Agency's view that compliance with § 1904.150(a) would in most cases not result in undue financial and administrative burdens on the Agency. In determining whether financial and administrative burdens are undue, all of the Agency's resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1904.150(a) would fundamentally alter the nature of a program or activity, or would result in undue financial and administrative burdens, rests with the Agency. The decision that compliance would result in that alteration, or those burdens, must be made by the Director, or his or her designee, and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Director's decision, or failure to make a decision, may file a complaint under the compliance procedures established in § 1904.170.

Paragraph (b)(1) sets forth a number of means by which program-accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among

methods, the Agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. If structural modifications are required, a transition plan must be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance must be taken within 60 days.

Section 1904.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 1904.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Agency must be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended, (42 U.S.C. 4151-4157). It is appropriate to adopt the existing Architectural Barriers Act standard of section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being

leased. They are subject, however, to the program accessibility standards for existing facilities in § 1904.150. To the extent that buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1904.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 744 F.2d 13355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The Agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 1904.160 Communications

Section 1904.160 requires the Agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps must include procedures for determining whether auxiliary aids are necessary under § 1904.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Agency's program or activity. They must also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice must be given primary consideration by the agency (§ 1904.160(a)(1)(i)). The Agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1904.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § 1904.150(a)(3)). Unless not required by § 1904.160(d), the agency

shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 1904.150(a), program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the Agency's obligation to comply with § 1904.160.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Agency intends to inform the public of: (1) The communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the Agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 1904.160(a)(1)(ii)). For example, the Agency need not provide eyeglasses or hearing aids to applicants or participants in its programs or activities. Similarly, the regulation does not require the Agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Agency to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 1904.170 Compliance procedures

Paragraph (a) specifies that paragraphs (c) through (i) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the Director, Office of Equal Employment Opportunity, as the official responsible for coordinating implementation of this section. Complaints may be sent to the Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

The Agency is required to accept and investigate all complete complaints (§ 1904.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 1904.170(e)).

Paragraph (f) requires the Agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the Agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 1904.170(g)). One appeal within the Agency must be provided (§ 1904.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (1) permits the Agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the Agency to make a final determination of compliance or noncompliance may not be delegated.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, at a CIA Reading Room in the metropolitan Washington, DC area designated by the

CIA Information and Privacy Coordinator upon request. Requests can be made by calling (703) 351-2083 or writing the Coordinator at the Central Intelligence Agency, Washington, DC 20505. The Coordinator will advise the requester of the location of the Reading Room, and will make comments available on a day or days mutually agreed upon. On the days the Reading Room is open, it will be available to requester from 9:30 a.m. to 3:30 p.m.

To assist the Agency with the specific requirements of Executive Order 12291 and the Paperwork Burden Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Agency invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 32 CFR Part 1904

Blind, Buildings, Civil rights, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

William H. Webster,

Director of Central Intelligence.

(Catalog of Federal Domestic Assistance Numbers does not apply.)

The Agency proposes to amend Title 32 of the Code of Federal Regulations by adding a new Part 1904 to read as follows:

**PART 1904—ENFORCEMENT OF
NONDISCRIMINATION ON THE BASIS
OF HANDICAP IN PROGRAMS OR
ACTIVITIES CONDUCTED BY THE
CENTRAL INTELLIGENCE AGENCY**

Sec.

- 1904.101 Purpose.
- 1904.102 Application.
- 1904.103 Definitions.
- 1904.104—1904.109 [Reserved]
- 1904.110 Self-evaluation.
- 1904.111 Notice.
- 1904.112—1904.129 [Reserved]
- 1904.130 General prohibitions against discrimination.
- 1904.131—1904.139 [Reserved]
- 1904.140 Employment.
- 1904.141—1904.148 [Reserved]
- 1904.149 Program accessibility: Discrimination prohibited.
- 1904.150 Program accessibility: Existing facilities.
- 1904.151 Program accessibility: New construction and alterations.
- 1904.152—1904.159 [Reserved]
- 1904.160 Communications.
- 1904.161—1904.169 [Reserved]
- 1904.170 Compliance procedures.

Authority: 19 U.S.C. 794, unless otherwise noted.

§ 1904.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1904.102 Application.

This part applies to all programs or activities conducted by the Agency, except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law.

§ 1904.103 Definitions.

For purposes of this part, the term—"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The Central Intelligence Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It must be signed by the

complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

"Director" means the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism;

(j) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1904.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the Agency and not to federally assisted programs.

§ 1904.104-1904.109 [Reserved]

§ 1904.110 Self-evaluation.

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any of those policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1904.111 Notice.

The Agency shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1904.112-1904.129 [Reserved]

§ 1904.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicap the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to other;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by

others receiving the aid, benefit, or service.

(2) The Agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1904.131–1904.139 [Reserved]

§ 1904.140 Employment.

No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1904.141–1904.148 [Reserved]

§ 1904.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1904.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 1904.150 Program accessibility: Existing facilities.

(a) *General.* The Agency shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This program does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2)(i) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Agency has the burden of proving that compliance with § 1904.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Director after considering all of the Agency's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Agency shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the

benefits and services of the program or activity.

(b) *Methods.* (1) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(2) The Agency is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing that Act.

(4) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete those changes.

(2) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan must be made available for public inspection.

(3) The plan must, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

§ 1904.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19-607, apply to buildings covered by this section.

§§ 1904.151-1904.159 [Reserved]

§ 1904.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The Agency shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(ii) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 1904.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1904.161-1904.169 [Reserved]

§ 1904.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to

refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by § 1904.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

[FR Doc. 89-3633 Filed 2-15-89; 8:45 am]

BILLING CODE 6310-02-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal Near Ketchikan, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers is proposing to establish five restricted

areas in the waters of the West Arm of the Behm Canal, north of Ketchikan, Alaska. The Navy has requested the establishment of the restricted areas to regulate certain vessel activities which could interfere with testing operations, threaten vessel safety or damage naval equipment and instrumentation. Scheduling of Naval testing activities would take into account other existing uses of the area including commercial and recreational boaters and fishing.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: HQDA, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Lund at (907) 753-2712 or Mr. Ralph Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers establish five restricted areas within the waters of the West Arm of Behm Canal to regulate vessel activities which could interfere with naval testing operations in those areas and threaten vessel safety or damage U.S. Government equipment and instrumentation.

The proposed restricted areas are described as follows: (1) Restricted areas No. 1 and No. 2 would be circular in shape and would each cover about 1 square mile. There would be no restrictions on vessels transiting the areas. However, no anchoring would be allowed; the towing of a drag of any kind or the deployment of nets would be prohibited; and the discharge of any material within the boundaries of the areas would be prohibited. Within area No. 2 no vessel would be allowed to moor, tie up to, or loiter in the vicinity of Navy barges, mooring buoys and underwater measurement equipment which may be located therein. The Navy does not intend to install surface marker buoys to identify the boundaries of these restricted areas because the markers would represent an unreasonable hazard to surface navigation. Within area No. 1 subsurface buoys used by the Navy will be set at approximately 100 feet below the water surface (which is deeper than the draft of any vessel normally transiting the area).

(2) Restricted areas No. 3 and No. 4 would be established to protect underwater cables and instrumentation located on or near the bottom from damage that could occur from anchoring or grappling. The regulations would allow unlimited transiting of the areas and would prohibit only anchoring, towing a drag within 100 feet of the bottom or discharging material. Anchoring along the shore of Back

Island would be allowed except where electrical and other cable are brought to shore and within 100 feet of the pier and dock facility located on the northwest shore of the island.

(3) Restricted area No. 5 would be open to navigation at all times unless the Navy is actually conducting operations in western Behm Canal. To ensure a safe and timely passage through the restricted area, vessel operators must contact the Naval Range Operations Officer by radio of their expected time of arrival, speed and intentions. The Navy will install flashing beacons to alert boaters of existing conditions in the area. A flashing green beacon would allow vessels to proceed through. A flashing red beacon would mean that the Navy is engaged in activities within the area and vessels may not pass through. Notification of the Range Operations Officer in advance will assist the Navy in coordinating vessel movements and the tests which would require closure of the area. The Navy expects to close the area for no more than 15-20 minutes each session to complete the tests. Small craft would be allowed to proceed through the area at speeds under 5 knots provided they remain within 500 yards of the shoreline and do not stop. An area measuring approximately 3,000 yards wide and 10,000 long located roughly along the centerline of area No. 5 would be used by submarines operating both submerged and surfacing during tests. Since these operations represent a potentially hazardous situation involving the collision of surface vessels and submarines, all vessels must clear the area and remain out until signalled by the Navy that the tests have been completed. Public notification that the Navy would be conducting operations in the Western Behm Canal would be accomplished through the U.S. Coast Guard Notice to Mariners and publication in the local Ketchikan newspaper. Maps showing the approximate locations of the proposed restricted areas are available by calling the persons listed in **FOR FURTHER INFORMATION CONTACT** or by writing to the **ADDRESS** furnished.

Economic Assessment and Certification. This proposed rule is issued with respect to a military function of the Department of Defense and provisions of E.O. 12291 do not apply. I hereby certify that if adopted, this regulation will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water) transportation, danger zones.

In consideration of the above the Corps of Engineers proposes to establish restricted area regulations in 33 CFR Part 334 to read as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C.1) and 40 Stat. 892; (33 U.S.C.3).

2. Part 334 is amended by adding a new § 334.1275 as follows:

§ 334.1275 West Arm Behm Canal, Ketchikan, Alaska, Restricted Areas.

(a) *The areas.*

Area No. 1. The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered on 55°36' N latitude, 131°49.2' W longitude.

Area No. 2. The waters of Behm Canal bounded by a circle 2,000 yards in diameter, centered at 55°34' N latitude, 131°48' W longitude.

Area No. 3. The waters of Behm Canal excluding those areas designated as areas Nos. 1 and 2 above, bounded by an irregular polygon beginning at the shoreline on Back Island near 55°32.63' N latitude, 131°45.18' W longitude, then bearing about 351° T to 55°38.06' N latitude, 131°46.75' W longitude then bearing about 300° T to 55°38.52' N latitude, 131°48.15' W longitude, then bearing about 203° T to 55°33.59' N latitude, 131°51.54' W longitude, then bearing about 112° T to the intersection of the shoreline at Back Island near 55°32.53' N latitude, 131°45.77' W longitude, then northeast along the shoreline to the point of beginning.

Area No. 4. The waters of Clover Passage bounded by an irregular polygon beginning at the shoreline on Back Island near 55°32.63' N latitude, 131°45.18' W longitude, then bearing 150° T to the intersection of the shoreline on Revillagigedo Island near 55°30.64' N latitude, 131°43.64' W longitude, then southwest along the shoreline to near 55°30.51' N latitude, 131°43.88' W longitude, then bearing 330° T to the intersection of the shoreline on Back Island near 55°32.16' N latitude, 131°45.20' longitude, and from there northeast along the shoreline to the point of beginning.

Area No. 5. The waters of Behm Canal bounding to the north by a line starting from Point Francis on the Cleveland Peninsula to Escape Point on Revillagigedo Island then south along the shoreline to Indian Point, then south to the Grant Island Light at 55°33.4' N latitude, 131°43.6' W longitude then bearing 216° T to the south end of Back

Island and continuing to the intersection of the shoreline on Betton Island at about 55°31.52' N latitude and 131°45.98' W longitude, then north along the shoreline of Betton Island to the western side below Betton Head at about 55°31.83' N latitude, 131°50' W longitude, then bearing 283° T across Behm Canal to the intersection of the shoreline near the point which forms the southeast entrance of Bond Bay at about 55°33.60' N latitude, 131°56.58' W longitude, then northeast to Helm Point on the Cleveland Peninsula, then northeast along the shoreline to the point of beginning at Point Francis.

(b) *The regulations.*

(1) *Area No. 1.* Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area.

(2) *Area No. 2.* Vessels are allowed to transit the area at any time. No vessel may anchor within the restricted area or tow a drag of any kind, deploy a net or dump any material within the area. Vessels are also prohibited from mooring or tying up to, loitering alongside or in the immediate vicinity of naval equipment and barges in the restricted area.

(3) *Area No. 3.* Vessels are allowed to transit the area at any time. Due to the presence of underwater cables and instrumentation, anchoring is prohibited and the towing of a drag or any object within 100 feet of the bottom is also prohibited. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where electrical and other cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(4) *Area No. 4.* Due to the presence of communication and power cables crossing from Revillagigedo Island to Back Island no anchoring or towing of a drag is allowed. Anchoring is allowed within 100 yards of the shore of Back Island except within 100 yards of each side of the area where the cables are brought ashore. The termination location of the cables on the land is marked with a warning sign that is visible from the water.

(5) *Area No. 5.* The area will be open unless the Navy is actually conducting operations. To ensure safe and timely passage through the restricted area vessel operators are required to notify the Range Operations Officer of their expected time of arrival, speed and intentions. For vessels not equipped with radio equipment, the Navy shall signal with flashing beacon lights whether passage is prohibited and when

it is safe to pass through the area. A flashing green beacon indicates that vessels may proceed through the area. A flashing red beacon means that the area is closed to all vessels and to await a green clear signal. Each closure of the area by the Navy will normally not exceed 20 minutes. Small craft may operate within 500 yards of the shoreline at speeds no greater than 5 knots in accordance with the restrictions in effect in area No. 3.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commander, David Taylor Research Center and such agencies he/she may designate.

Dated: February 6, 1989.

Approved:

Wilbur T. Gregory,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 89-3608 Filed 2-15-89; 8:45 am]

BILLING CODE 3710-92-M

VETERANS ADMINISTRATION

38 CFR Part 4

Combined Ratings Table; Procedural Usage

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its regulation for procedural usage of the Combined Ratings Table. This change facilitates a uniform method of calculating the combined degree of disability where multiple disabilities arising from a single disease entity are combined with other disabilities. The intended result of this change is to eliminate an ambiguity regarding the stage at which disability evaluations are to be rounded in determining the combined degree of disability.

DATES: Comments must be received on or before March 20, 1989. This change is proposed to be effective 30 days after the date of publication of the final rule. Comments will be available for public inspection until March 28, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 a.m. and 4:30

p.m., Monday through Friday (except holidays), until March 28, 1989.

FOR FURTHER INFORMATION CONTACT:

Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 233-3005.

SUPPLEMENTARY INFORMATION: The regulation regarding usage of the Combined Ratings Table is being amended to avoid misinterpretation. A change in adjudicative procedure during 1964 resulted in erroneous calculation of combined degree of disability in certain cases where multiple disabilities arising from a single disease entity, such as arthritis, multiple sclerosis, cerebrovascular accident, etc., were combined with disability evaluations not related to that disease entity. The error occurred when the degrees of disability due to the single disease entity were combined separately and the result rounded to the nearest degree divisible by 10. The rounded result was then combined with the degree(s) of disability unrelated to that disease entity, followed by another rounding to the nearest degree divisible by 10. The procedural addition of the initial rounding process resulted in some combined disability evaluations which were computed to be 10 percent higher or lower than that which would have been calculated if the first rounding had not occurred. The procedural error was corrected through revision of adjudicative procedural instructions published in 1986. However, in Undigested Opinion, July 1, 1987 (8-17 Ratings—General), the VA General Counsel held that these amendments to procedure concerning the combining of multiple disabilities were invalid because they constituted a substantive reinterpretation of the law and should have been promulgated through proper regulatory development.

This proposed change redesignates the existing wording of 38 CFR 4.25, beginning with the fifth sentence, as paragraph (a) and adds paragraph (b). The new paragraph is being added to clearly provide that rounding to the nearest degree divisible by 10 should occur only once after all distinct disability evaluations have been combined. This method treats all disability evaluations equally, and properly implements the interpretation to cure the defect noted by the General Counsel.

The Administrator hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are

defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: January 31, 1989.

Thomas E. Harvey,
Acting Administrator.

PART 4—[AMENDED]

38 CFR Part 4 Schedule of Rating Disabilities is proposed to be amended by revising § 4.25 as set forth below:

§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent.

(a) To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the

degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. The combined value, exactly as found in table I, will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10, adjusting final 5's upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I).

(b) Except as otherwise provided in this schedule, the disabilities arising from a single disease entity, e.g., arthritis, multiple sclerosis, cerebrovascular accident, etc., are to be rated separately as are all other disabling conditions, if any. All disabilities are then to be combined as described in paragraph (a) of this section. The conversion to the nearest degree divisible by 10 will be done only once per rating decision, will follow the combining of all disabilities, and will be the last procedure in determining the combined degree of disability.

(Authority: 38 U.S.C. 355)

[FR Doc. 89-3610 Filed 2-15-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3521-5; FL-024]

Approval and Promulgation of Implementation Plans; State of Florida Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Florida that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Florida has satisfied their obligations under section 406 of the Clean Air Act Amendments of 1977 to review their SIP with respect to EPA's revised stack height regulations.

DATES: Comments must be received on or before March 20, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below). Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street, N.E., Atlanta,
Georgia 30365
Bureau of Air Quality Management,
Twin Towers Office Building, 2600
Blair Stone Road, Tallahassee, Florida
29201

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed
address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to

reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (490 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

For the review of emission limitations, the regulations required the states to prepare inventories of stacks greater than 65 meters (m) in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Florida has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no existing emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. Florida has indicated that the documentation is available for review at

the State office listed above. A summary of the State's findings is provided below.

Two hundred and forty stacks/sources were examined in the stack height review analysis. A total of 123 stacks/sources were reviewed under the tall stack provision of the rule. Of these 64 stacks/sources were reviewed for GEP formula height; the remainder were either grandfathered or found to be less than 65m high. Eight of these 64 were found to have stack heights greater than the calculated GEP height. One hundred and seventeen stacks/sources were reviewed for other prohibited dispersion techniques. No stacks/sources were found that used a prohibited dispersion technique.

The sources were screened for exemption from modeling as falling under the grandfathering clause (in existence before December 31, 1970), or having stack heights less than the *de minimis* stack height (65m) and/or an actual stack height less than the calculated Good Engineering Practice (GEP) stack height. Of the 240 stacks/sources analyzed, eight did not qualify for exemption from modeling analysis.

Each stack that exceeds the GEP stack height was modeled using EPA-approved techniques. The modeling techniques used in the demonstration supporting this revision are, for the most part based on modeling guidance in place at the time that the analysis was performed, i.e., "the EPA Guideline on Air Quality Models" (1978).

Since that time, revisions to modeling guidance has been promulgated by EPA (53 FR 392, January 6, 1988). Because the modeling analysis was underway prior to publication of the revised guidance, EPA accepts the analysis.

The modeling results indicate that no violations of SO₂ or total suspended particulate (TSP) National Ambient Air Quality Standards are to be expected from the reduced stack height allowance. Therefore, no emission limit in the state reflects credit for the use of any stack higher than GEP or any other prohibited dispersion technique.

EPA is not acting on five (5) sources (identified in table form or by asterisk) because they currently receive credit under one of the provisions remanded to EPA in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir 1988). Florida and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the NRDC remand.

EPA Review

EPA has reviewed Florida's submittal and concurs with the conclusion that no SIP revisions are necessary as a result of EPA's revised stack height

regulations. Florida has therefore met its obligations under section 406 of Pub. L. 95-95.

EPA's detailed review and approval of the modeling results submitted by the State is contained in a Technical Support Document. This document is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this notice. By publishing this proposed approval of the review and soliciting public comment, EPA is ensuring the opportunity for public participation in this process.

Proposed Action

EPA is proposing to approve declaration by Florida that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this state.

Under 5 U.S.C. 605(b), I certify that this SIP approval does not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control,
Intergovernmental relations.

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

Note: This document was received by the Office of the Federal Register February 13, 1989.

Dated: May 12, 1987.

Lee A. DeHilns, III,
Acting Regional Administrator.

[FR Doc. 89-3622 Filed 2-15-88; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3521-6; MS-011]

Approval and Promulgation of Implementation Plans Mississippi: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by Mississippi that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP) in this State. The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this

action is to formally document that Mississippi has satisfied their obligations under section 406 of Pub. L. 95-95 to review their SIP with respect to EPA's revised stack height regulations.

DATE: Comments must be received on or before March 20, 1989.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street NE., Atlanta, Georgia
30365.

Air Quality Control, Bureau of Pollution
Control, Department of Natural
Resources, P.O. Box 10385, Jackson,
Mississippi 39209.

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed
address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On
February 8, 1982 (47 FR 5864), EPA
promulgated final regulations limiting
stack height credits and other dispersion
techniques as required by section 123 of
the Clean Air Act (the Act). These
regulations were challenged in the U.S.
Court of Appeals for the D.C. circuit by
the Sierra Club Legal Defense Fund, Inc.,
the Natural Resources Defense Council,
Inc., and the Commonwealth of
Pennsylvania in *Sierra Club v. EPA*,
719 F.2d 436. On October 11, 1983, the
court issued its decision ordering EPA to
reconsider portions of the stack height
regulations, reversing certain portions
and upholding other portions.

On February 28, 1984, the electric
power industry filed a petition for a writ
of certiorari with the U.S. Supreme
Court. On July 2, 1984, the Supreme
Court denied the petition (104 S. Ct.
3571), and on July 18, 1984, the Court of
Appeals formally issued a mandate
implementing its decision and requiring
EPA to promulgate revisions to the stack
height regulations within six months.
The promulgation deadline was
ultimately extended to June 27, 1985.

Revisions to the stack height
regulations were proposed on November
9, 1984 (49 FR 44878) and finalized on
July 8, 1985 (50 FR 27892). The revisions
redefine a number of specific terms,
including "excessive concentration,"
"dispersion techniques," "nearby," and
other important concepts, and modify
some of the bases for determining good
engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L.
95-95, all states were required to (1)
review and revise, as necessary, their
state implementation plans (SIPs) to
include provisions that limit stack height
credit and dispersion techniques in
accordance with the revised regulations
and (2) review all existing emission
limitations to determine whether any of
these limitations have been affected by
stack height credits above GEP or any
other dispersion techniques. For any
limitations so affected, states were to
prepare revised limitations consistent
with their revised SIPs. All SIP revisions
and revised emission limits were to be
submitted to EPA within 9 months of
promulgation, as required by statute.

For the review of emission limitations,
the regulations required the states to
prepare inventories of stacks greater
than 65m in height and sources with
emissions of sulfur dioxide (SO₂) in
excess of 5,000 tons per year. These
limits correspond to the *de minimis* GEP
stack height and the *de minimis* SO₂
emission exemption from prohibited
dispersion techniques. These sources
were then subjected to detailed review
for conformance with the revised
regulations. State submissions were to
contain an evaluation of each stack and
source in the inventory.

Mississippi has concluded that its SIP
includes provisions that limit stack
height credits and dispersion techniques
in accordance with the revised EPA
stack height regulations. EPA is acting
on Mississippi's submittal to comply
with these requirements in a separate
Federal Register notice. The State also
found that no existing emission
limitations have been affected by stack
height credits above GEP or any other
prohibited dispersion techniques. All
potentially affected sources having
stacks greater than 65 meters and total
SO₂ allowable emissions greater than
5000 tons per year were inventoried and
summarized in the Technical Support
Document, with documentation to
support the analysis for each stack.
Mississippi has indicated that the
documentation is also available for
review at the State office (listed above).
A summary of the State's findings is
provided below.

A total of eighty-two (82) stacks were
examined in the stack height review
analysis. Forty-eight (48) stacks were
reviewed for GEP formula height and
thirty-four (34) were grandfathered. No
stacks were found to have stack heights
greater than the calculated GEP height.
Eighty-two (82) stacks were also
reviewed for other prohibited dispersion
techniques. No stacks were found that
used a prohibited dispersion technique.
EPA is not acting on five sources

(identified in table form or by asterisk)
because they currently receive credit
under one of the provisions remanded to
the EPA in *NRDC v. Thomas*, 838 F.2d
1224 (D.C. Cir 1988). Mississippi and
EPA will review these sources for
compliance with any revised
requirements when EPA completes
rulemaking to respond to the NRDC
remand.

EPA Review

EPA has reviewed Mississippi's
submittal and concurs with the
conclusion that no revisions to
Mississippi's existing source emission
limitations are necessary as a result of
EPA's revised stack height regulations.
Mississippi has therefore met its
obligations under section 406 of Pub. L.
95-95 for existing source emission
limitations. Mississippi has also
submitted regulations to comply with
the obligations under Section 406 of P.L.
95-95, for new sources, as required in 40
CFR 51.164 and 51.118. This submittal
will be addressed in a separate notice.

The technical support submitted by
the State is available for public
inspection at the EPA Regional Office
listed in the ADDRESSES section of this
notice. By publishing this proposed
approval of the submittal and soliciting
public comment, EPA is ensuring the
opportunity for public participation in
this process.

Proposed Action

EPA is proposing to approve the
declarations by Mississippi that recent
revisions to EPA's stack height
regulations do not necessitate SIP
revisions for specific sources in this
State.

Today's action does not certify that
Mississippi has complied with the
regulations contained in 40 CFR 51.164
and 51.118. Those Federal provisions
contain the stack height requirements
for all sources that were or are
constructed, reconstructed or modified
subsequent to December 31, 1970. EPA is
acting on Mississippi's submittal to
comply with these requirements in a
separate Federal Register notice.

Under 5 U.S.C. 605(b), the
Administrator has certified that SIP
approvals do not have a significant
economic impact on a substantial
number of small entities. (See 46 FR
8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control,
Intergovernmental relations.

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

Dated: March 18, 1987.

John T. Marlar,

Acting Regional Administrator.

Note: This document was received by the Office of the Federal Register February 13, 1989.

[FR Doc. 89-3623 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION**45 CFR Part 670****Conservation of Antarctic Animals and Plants**

AGENCY: National Science Foundation.

ACTION: Proposed rulemaking.

SUMMARY: Because of recommendations adopted at the 14th consultative meeting, NSF is proposing to amend its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additional sites of special scientific interest in Antarctica. In addition, wording changes are being made to better clarify the relationship of the management plans for sites of special scientific interest and the management plans recommended at the consultative meetings.

DATE: Written comments will be considered which are received on or before April 17, 1989.

ADDRESSES: Comments should be sent to Dr. Anton L. Inderbitzen, Polar Coordination and Information Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT:

Anton L. Inderbitzen at the address above or by telephone on 202-357-7817.

SUPPLEMENTARY INFORMATION: Since these regulations were issued in 1979, several consultative meetings have been held in accordance with Article IX of the Antarctic Treaty. During 1988, 45 CFR Part 670 was amended to reflect changes made through the 13th consultative meeting (Notice of proposed rule making 53 FR 16886 and Final Rule 53 FR 27991). This further amendment would add seven new sites of special scientific interest based on recommendation 14-5 at the 14th consultative meeting.

The United States representatives to the meeting supported this recommendation and it has been approved by the United States. The

purpose of this amendment is to implement recommendation 14-5 with respect to the activities of United States citizens and nationals in Antarctica as authorized by section 6 of the Antarctic Conservation Act of 1978.

In addition, changes are being made in the formatting of the portions of the regulation relating to sites of special scientific interest. In all cases, to date, the management plan adopted by the United States has been the same as that recommended at the consultative meetings, but this is not fully reflected in the published regulations. The combining of management plans for several sites has also made it difficult to track the plans to specific recommendations. The new format incorporates the complete management plans by reference, and contemplates that any modifications or additional restrictions will be discussed in the regulations. No substantive change from the existing regulations pertaining to sites of special scientific interest is intended.

As required by the Antarctic Conservation Act, NSF consulted with the Department of State prior to preparing this notice.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, it is proposed that 45 CFR Part 670 be amended as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.4(c) is revised to read as follows:

§ 670.4 Prohibited acts.

* * * * *

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter sites of special scientific interest, except sites of special scientific interest for which § 670.34 states no permit is required.

* * * * *

3. Section 670.34 is revised to read as follows:

§ 670.34 Designation of sites of special scientific interest and management plans for those sites.

(a) The Director is required to designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting. The Director is also required to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the areas listed below are designated as sites of special scientific interest to be managed in accordance with the management plan recommended at the applicable consultative meeting and any subsequent amendments to that plan. The number of the recommendation, including any modifications made at subsequent consultative meetings, is included below after each site, as is the site number established at the consultative meetings. If there are any variations or additional management measures required by the United States they shall also be included in the listing below. Any specific conditions or limitations included in permits issued under this regulation will be consistent with these plans. More detailed maps and descriptions of the sites and the complete management plans as recommended at the consultative meetings can be obtained from the National Science Foundation, Division of Polar Programs, Washington, DC 20550.

(b) The sites of special scientific interest are as follows:

(1) *Cape Royds, Ross Island:* Site No. 1 as described in Recommendation VIII-4 as revised by Recommendations X-6, XII-5 and XIII-9.

(2) *Arrival Heights, Hut Point Peninsula, Ross Island:* Site No. 2 as described in Recommendation VIII-4 as revised by Recommendations X-6, XII-5, XIII-7 and XIV-4. This site does not require an entry permit.

(3) *Barwick Valley, Victoria Land:* Site No. 3 as described in Recommendations VIII-4 as revised by Recommendations X-6, XII-5 and XIII-7.

(4) *Cape Crozier, Ross Island:* Site No. 4 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(5) *Fildes Peninsula, King George Island, South Shetland Islands:* Site No. 5 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(6) *Byers Peninsula, Livingston Island, South Shetland Islands:* Site No.

6 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(7) *Haswell Island*: Site No. 7 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(8) *Western Shore of Admiralty Bay, King George Island*: Site No. 8 as described in Recommendation X-5 as revised in Recommendations XII-5 and XIII-7.

(9) *Rothera Point, Adelaide Island*: Site No. 9 as described in Recommendation XIII-8.

(10) *Caughley Beach, Cape Bird, Ross Island*: Site No. 10 as described in Recommendation XIII-8.

(11) *Tramway Ridge, Mt. Erebus, Ross Island*: Site No. 11 as described in Recommendation XIII-8.

(12) *Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land*: Site No. 12 as described in Recommendation XIII-8.

(13) *Potter Peninsula, King George Island, South Shetland Islands*: Site No. 13 as described in Recommendation XIII-8.

(14) *Harmony Point, Nelson Island, South Shetland Islands*: Site No. 14 as described in Recommendation XIII-8.

(15) *Cierva Point and nearby islands, Danco Coast, Antarctic Peninsula*: Site No. 15 as described in Recommendation XIII-8.

(16) *Bailey Peninsula, Budd Coast, Wilkes Land*: Site No. 16 as described in Recommendation XIII-8.

(17) *Clark Peninsula, Budd Coast, Wilkes Land*: Site No. 17 as described in Recommendation XIII-8.

(18) *White Island, McMurdo Sound*: Site No. 18 as described in Recommendation XIII-8.

(19) *Linnaeus Terrace, Asgaard Range, Victoria Land*: Site No. 19 as described in Recommendation XIII-8.

(20) *Biscoe Point, Anvers Island, Palmer Archipelago*: Site No. 20 as described in Recommendation XIII-8.

(21) *Shores of Port Foster, Deception Island, South Shetland Islands*: Site No. 21 as described in Recommendation XIII-8.

(22) *Yukirdori Valley, Langhovde, Lutzow-Holm Bay*: Site No. 22 as described in Recommendation XIV-5.

(23) *Svarthamaren, Muhlig-Hofmannfjella, Dronning Maud Land*: Site No. 23 as described in Recommendation XIV-5.

(24) *Summit of Mt. Melbourne, North Victoria Land*: Site No. 24 as described in Recommendation XIV-5. Site No. 24 as described in Recommendation XIV-5.

(25) *Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land*:

Site No. 25 as described in Recommendation XIV-5.

(26) *Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands*: Site No. 26 as described in Recommendation XIV-5.

(27) *Port Foster, Deception Island, South Shetland Islands*: Site No. 27 as described in Recommendation XIV-5.

(28) *South Bay, Doumer Island, Palmer Archipelago*: Site No. 28 as described in Recommendation XIV-5.

Date: February 8, 1989.

Charles H. Herz,
General Counsel.

[FR Doc. 89-3692 Filed 2-15-89; 8:45 am]

BILLING CODE 7555-01-M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1552

[FRL-3520-3]

Acquisition Regulation; Submission of General Financial and Organizational Information and Purchasing System Information by Offerors

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes a rule on the submission of general financial and organizational information and purchasing system information by offerors. This proposed rule is necessary to permit a more thorough initial evaluation of proposals received from offerors, and to identify those contractors which the Environmental Protection Agency (EPA) has the responsibility for the conduct of Contractor Purchasing System Reviews (CPSR). The intended effect of this proposed rule is to require offerors to submit information with their proposals to assist in the evaluation process and determination of CPSR responsibility.

DATE: Written comments should be submitted not later than April 17, 1989.

ADDRESS: Comments should be addressed to: Environmental Protection Agency, Procurement & Contracts Management Division (PM-214-F), 401 M Street, SW., Washington, DC 20460, Attn: Edward N. Chambers.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, Telephone: (202) 382-5028.

SUPPLEMENTARY INFORMATION:

A. Background

The EPA currently requires general financial and organizational information only from offerors in the competitive

range. This information is obtained by offerors' completion of the questions under Environmental Protection Agency Acquisition Regulation (EPAAR) 1552.215-76, or their certification or updating of previously submitted information as directed by EPAAR 1552.215-75. Pertinent general financial and organizational information has therefore not been available for the initial evaluation of proposals.

Federal Acquisition Regulation 44.302 requires that Contractor Purchasing System Reviews (CPSR) be conducted for each contractor whose qualifying sales to the Government are expected to exceed \$10 million over the next 12 months. The cognizant contract administration agency conducts these reviews at least every three years for contractors that continue to exceed the \$10 million threshold.

The general and organizational information prescribed under EPAAR 1552.215-76 does not include information concerning an offeror's purchasing system. The EPA attempts to identify contractors for which it has CPSR responsibility through its Contract Information System (CIS). The CIS is an automated tracking system of all contracts and contract actions processed by EPA. The CIS does not enable EPA to identify all contractors for which EPA has CPSR responsibility since the CIS does not contain information on subcontracts and contracts with other Government agencies.

Information to be provided by offerors under this proposed rule will enable EPA to identify contractors with qualifying Government sales in excess of \$10 million and to ascertain the cognizant contract administration agency for these contractors.

B. Executive Order 12291

Office of Management and Budget (OMB) Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for OMB review of agency acquisition regulations. This proposed regulation does not fall within any of the categories cited in the Bulletin requiring review.

C. Paperwork Reduction Act

The Act applies and EPA is in the process of acquiring clearance from OMB.

D. Regulatory Flexibility Act

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The

information requested for submission is readily available and will require only a minimal effort for offerors to compile. The EPA certifies that this proposed rule will not exert a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

List of Subjects in 48 CFR Parts 1515 and 1552

Government procurement.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for Parts 1515 and 1552 continue to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1515—[AMENDED]

2. Section 1515.407 is amended by removing paragraph (a)(3).

3. In Section 1515.407, paragraph (b) is redesignated as paragraph (a)(3) and revised to read as follows:

1515.407 Solicitation provisions.

(a) * * *

(3) 1552.215-76, General Financial and Organizational Information.

* * *

4. In section 1515.407, paragraph (c) is redesignated as paragraph (b).

PART 1552—[AMENDED]

1552.215-75 [Removed and Reserved]

5. Section 1552.215-75 is removed and reserved.

6. Section 1552.215-76 is amended by revising the introductory paragraph and paragraph (q) of the provision to read as follows:

1552.215-76 General financial and organizational information.

As prescribed in 1515.407(a)(3), insert the following provision:

* * *

(q) Purchasing System:

FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed \$10 million (annual billings) during the next twelve months. The \$10 million sales threshold is comprised of prime contracts, subcontracts under Government prime

contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation). Has your purchasing system been approved by a Government agency? Yes ____ No ____

If yes, name and location of the Government agency: _____

Period of Approval: _____

If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the \$10 million threshold? Yes ____ No ____

If you respond yes to the \$10 million threshold question, is EPA the cognizant Government agency for your organization based on the preponderance of Government contract dollars? Yes ____ No ____

If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency: _____

Are your purchasing policies and procedures written? Yes ____ No ____

* * *

(End of provision)

Dated: January 12, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89-3532 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register

Vol. 54, No. 31

Thursday, February 16, 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

Forest Service

Management of Mount Shasta Wilderness; Notice of Intent

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on management options for the Mt. Shasta Wilderness on the Mt. Shasta and McCloud Ranger Districts, Shasta-Trinity National Forests, Siskiyou County, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by March 31, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Robert Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, ATTN: Mt. Shasta Wilderness EIS, 2400 Washington Ave., Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Garry Oye, EIS Team Leader, Mt. Shasta Ranger District, 204 West Alma, Mt. Shasta, CA 96067, phone 916-926-4511.

SUPPLEMENTARY INFORMATION: The 1969 Sacramento District Multiple Use Plan, a 1926 Secretary of Agriculture Mt. Shasta Recreation Area Order, and 1984 California Wilderness Act have provided general management direction for Mount Shasta. The proposed action

is consistent with direction in all three documents.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for future management of this wilderness. One of these will be limiting Forest Service management to existing levels. Other alternatives will consider carrying capacity and range of visitor use levels. Alternative trail and access options will be considered.

Robert Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, Redding, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Forest Supervisor will hold public scoping meetings at 7:00 p.m. at the following locations:

Yreka, California: Yreka City Council Chambers, February 27, 1989

Mount Shasta, California: Mount Shasta Recreation Center, February 28, 1989

Redding, California: Redding City Council Chambers, March 1, 1989

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the Mt. Shasta Wilderness participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by December 1989. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Date: February 6, 1989

Robert Tyrrel,

Forest Supervisor.

[FR Doc. 89-3681 Filed 2-15-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA760-09-4410-01-2410]

Land and Resource Management
Planning Schedules**AGENCY:** Forest Service, USDA; Bureau of Land Management, Interior.**ACTION:** Joint Notification of Land and Resource Management Planning Schedules.

SUMMARY: Land and resource management plans of the Forest Service and the Bureau of Land Management frequently cover adjoining areas which share common resource issues and management concerns requiring continuous and close interagency coordination. Therefore, the USDA Forest Service and the DOI Bureau of Land Management have again elected to jointly announce land management planning schedules for lands which each agency administers. The purpose of publishing joint planning schedules is to provide agencies and the public with the opportunity to study the relationships

between the agencies' current and projected planning activities.

The Forest Service and the Bureau of Land Management's planning systems are authorized and administered under different laws and regulations. Consequently, this notice is organized into two parts (Part A—Forest Service and Part B—Bureau of Land Management).

Comments on the schedules should be directed to the appropriate agency (see **ADDRESS**, Part A and Part B).

Part A—Forest Service

The National Forest Management Act of 1976 directed the Secretary of Agriculture to attempt to complete land and resource management plans for each "administrative unit" (e.g., National Forest) of the National Forest System by September 30, 1985.

Regulations to guide this effort were initially developed in 1979 and revised in 1982 at the direction of the Presidential Task Force on Regulatory Relief (Vol. 47, No. 190 of the Federal Register, September 30, 1982).

Additional revision to the rules was necessary to respond to a court decision that the 1979 Roadless Area Review and Evaluation (RARE II) environmental impact statement and associated procedures were inadequate under the National Environmental Policy Act (NEPA).

The NFMA regulations require integrated planning for all resources of the National Forest System—recreation,

fish and wildlife, water, timber, range, and wilderness. The rules set forth a process for developing and revising the land and resource management plans as required by the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). These rules require development of Regional Guides and Forest Plans. Each plan will include all management planning for resources and be supported by an environmental impact statement.

All drafts and final Regional Guides and Forest Plans and associated environmental impact statements have been or will be filed with the Environmental Protection Agency and made available to the public for comment.

A planning schedule is included below showing the fiscal year in which draft and final documents have been or will be filed. Also given are the addresses of the Forest Service's nine Regional Offices and National Forest headquarters in each Region for which plans are to be prepared.

Readers interested in the progress and status of a particular Regional Guide or Forest Plan should contact the appropriate Regional Forester or Forest Supervisor.

Date: December 22, 1988.

George M. Leonard,
Associate Chief.National Forest System Field Offices and Fiscal Year Filing Dates of Regional Guides and Forest Plans
With the Environmental Protection Agency

	Headquarters location ¹	Fiscal year to be filed	
		DEIS ²	FEIS ²
R-1 NORTHERN REGION, FEDERAL BUILDING, MISSOULA, MONTANA 59807			
Regional Guide.....			
Idaho:		1981	1983
Clearwater.....	Orofino 83544.....	^a 1985	1987
Idaho Panhandle National Forests ⁴ (Coeur d'Alene, Kaniksu, St. Joe).	Coeur d'Alene 83814.....	^a 1985	1987
Nezperce.....	Grangeville 83530.....	1985	1988
Montana:			
Beaverhead.....	Dillon 59725.....	1985	1986
Bitterroot.....	Hamilton 59840.....	^a 1985	1987
Custer.....	Billings 59103.....	1985	1987
Deerlodge.....	Butte 59701.....	1985	1987
Flathead.....	Kalispell 59901.....	^a 1984	1986
Gallatin.....	Bozeman 59715.....	1985	1987
Helena.....	Helena 59601.....	^a 1985	1986
Kootenai.....	Libby 59923.....	1985	1987
Lewis and Clark.....	Great Falls 59403.....	^a 1984	1986
Lojo.....	Missoula 59801.....	^a 1985	1986
R-2 ROCKY MOUNTAIN REGION, 11177 W. 8TH AVE., BOX 25127, LAKEWOOD, COLORADO 80225			
Regional Guide.....		1981	1983
Colorado:			
Arapaho-Roosevelt ⁴	Ft. Collins 80521.....	1982	1984
Supplement.....		—	1985
Grand Mesa, Uncompahgre, and Gunnison ⁴	Delta 81416.....	1983	1983
Supplement.....		1989	1989
Pike and San Isabel.....	Pueblo 81008.....	1982	1985

	Headquarters location ¹	Fiscal year to be filed	
		DEIS ²	FEIS ²
Rio Grande.....	Monte Vista 81144.....	1983	1985
Routt.....	Steamboat Springs 80477.....	1983	1984
San Juan.....	Durango 81301.....	1982	1983
Supplement.....		1988	1989
White River.....	Glenwood Springs 81601.....	1983	1984
Nebraska:			
McKelvie ⁴	Chadron 69337.....	1982	1985
South Dakota:			
Black Hills.....	Custer 57730.....	1982	1983
Wyoming:			
Bighorn.....	Sheridan 82801.....	1984	1986
Supplement.....		1985	
Medicine Bow.....	Laramie 82070.....	1984	1986
Shoshone.....	Cody 82414.....	1984	1986
R-3 SOUTHWESTERN REGION, 517 GOLD AVE., SW., ALBUQUERQUE, NEW MEXICO 87102			
Regional Guide.....		1981	1983
Arizona:			
Apache-Sitgreaves ⁴	Springerville 85938.....	1986	1988
Coconino.....	Flagstaff 86001.....	1986	1988
Coronado.....	Tucson 85702.....	1985	1986
Kaibab.....	Williams 86046.....	1987	1988
Prescott.....	Prescott 86301.....	1985	1987
Tonto.....	Phoenix 85034.....	1985	1986
New Mexico:			
Carson.....	Taos 87571.....	1985	1987
Cibola.....	Albuquerque 87112.....	1984	1985
Gila.....	Silver City 88061.....	1985	1987
Lincoln.....	Alamogordo 88310.....	1985	1987
Santa Fe.....	Santa Fe 87501.....	1986	1987
R-4 INTERMOUNTAIN REGION, 324 25TH STREET, OGDEN, UTAH 84401			
Regional Guide.....		1981	1984
Idaho:			
Boise.....	Boise 83706.....	1988	1989
Caribou.....	Pocatello 83201.....	1984	1986
Challis.....	Challis 83226.....	1985	1987
Payette.....	McCall 83638.....	1985	1988
Salmon.....	Salmon 83467.....	1985	1988
Sawtooth.....	Twin Falls 83301.....	1985	1987
Targhee.....	St. Anthony 83445.....	1981	1986
Supplement.....		—	1985
Nevada:			
Humboldt.....	Elko 89801.....	1985	1986
Toiyabe.....	Reno 89501.....	1985	1986
Utah:			
Ashley.....	Vernal 84078.....	1985	1987
Dixie.....	Cedar City 84720.....	1986	1986
Fishlake.....	Richfield 84701.....	1985	1986
Manti-LaSal.....	Price 84501.....	1985	1987
Uinta.....	Provo 84601.....	1982	1985
Supplement.....		—	1984
Wasatch-Cache ⁴	Salt Lake City 84138.....	1985	1985
Wyoming:			
Bridger-Teton ⁴	Jackson 83001.....	1987	1989
R-5 PACIFIC SOUTHWEST, 630 SANSOME STREET, SAN FRANCISCO, CALIFORNIA 94111			
Regional Guide.....		1981	1984
California:			
Los Angeles.....	Pasadena 91101.....	1985	1988
Cleveland.....	San Diego 92188.....	1985	1986
Eldorado.....	Placerville 95667.....	1986	1989
Inyo.....	Bishop 93514.....	1987	1988
Klamath.....	Yreka 96087.....	1990	1991
Lassen.....	Susanville 96130.....	1986	1989
Los Padres.....	Goleta 93107.....	1986	1988
Mendocino.....	Willows 95988.....	1987	1989
Modoc.....	Alturas 96101.....	1988	1989
Plumas.....	Quincy 95971.....	1986	1988
San Bernardino.....	San Bernardino 92408.....	1986	1989
Sequoia.....	Porterville 93257.....	1986	1988
Shasta-Trinity ⁴	Redding 96001.....	1989	1990
Sierra.....	Fresno 93721.....	1987	1989
Six Rivers.....	Eureka 95501.....	1987	1989
Stanislaus-Calaveras, Big Tree ⁴	Sonora 95370.....	* 1989	1990
Tahoe.....	Nevada City 95959.....	1986	1989

	Headquarters location ¹	Fiscal year to be filed	
		DEIS ²	FEIS ²
Lake Tahoe Basin Management Unit.....	So. Lake Tahoe 95731.....	1986	³ 1989
R-6 PACIFIC NORTHWEST REGION, 319 SW PINE STREET, P.O. BOX 3623, PORTLAND, OREGON 97208			
Regional Guide.....		1982	1984
Supplemental EIS.....		1986	1989
Oregon:			
Deschutes.....	Bend 97701.....	1986	1989
Supplement.....		1988	—
Fremont.....	Lakeview 97630.....	1988	1989
Malheur.....	John Day 97845.....	1988	1989
Mt. Hood.....	Portland 97233.....	1988	1989
Supplement.....		1988	—
Ochoco.....	Prineville 97754.....	1987	1989
Rogue River.....	Medford 97501.....	1988	1989
Siskiyou.....	Grants Pass 97526.....	1988	1989
Siuslaw.....	Corvallis 97330.....	1987	1989
Supplement.....		1988	—
Umatilla.....	Pendleton 97801.....	1988	1989
Umpqua.....	Roseburg 97470.....	1988	1989
Willow-Whitman ⁴	Baker 97814.....	1986	1989
Supplement.....		1988	—
Willamette.....	Eugene 97440.....	1988	1989
Winema.....	Klamath Falls 97601.....	1988	1989
Washington:			
Colville.....	Colville 99114.....	1988	1989
Gifford Pinchot.....	Vancouver 98660.....	1988	1989
Mt. Baker-Snoqualmie ⁴	Seattle 98101.....	1988	1989
Okanogan.....	Okanogan 98840.....	1986	1989
Supplement.....		1988	—
Olympic.....	Olympic 98501.....	1987	1989
Supplement.....		1988	—
Wenatchee.....	Wenatchee 98801.....	1986	1989
Supplement.....		1988	—
R-8 SOUTHERN REGION, 1720 PEACHTREE ROAD, NW, ATLANTA, GEORGIA 30309			
Regional Guide.....		1982	1984
Alabama:			
National Forests in Alabama ⁴ (William B. Bankhead, Conecuh, Talladega, Tuskegee).	Montgomery 36101.....	1985	1986
Arkansas:			
Ouachita.....	Hot Springs 79101.....	1985	1986
Supplement.....		1989	1989
Ozark-St. Francis ⁴	Russellville 72801.....	1985	1986
Florida:			
National Forests in Florida ⁴ (Apalachicola, Ocala, Osceola).....	Tallahassee 32301.....	1985	1986
Georgia:			
Chattahoochee-Oconee ⁴	Gainesville 30501.....	1984	1985
Kentucky:			
Daniel Boone.....	Winchester 40391.....	1985	1985
Louisiana:			
Kisatchie.....	Pineville 71360.....	1984	1985
Mississippi:			
National Forests in Mississippi ⁴ (Bienville, Delta, DeSoto, Holly Springs, Homochitto, Tombigbee).	Jackson 39205.....	1985	1985
North Carolina:			
National Forests in North Carolina ⁴	Asheville 28802.....	1985	1987
Nantahala and Pisgah.....		1985	1986
Uwharrie and Croatan.....			
Puerto Rico:			
Caribbean.....	Rio Piedras 00928.....	1985	1986
Supplement.....		1989	1989
South Carolina:			
Francis Marion & Sumter ⁴	Columbia 29202.....	1984	1985
Francis Marion.....		1985	1985
Sumter.....			
Tennessee:			
Cherokee.....	Cleveland 37311.....	1985	1986
Texas:			
National Forests in Texas ⁴ (Angelina, Davy Crockett, Sabine, Sam Houston).	Lufkin 75901.....	1985	1987
Virginia:			
George Washington.....	Harrisonburg 22801.....	1985	1986
Supplement.....		1989	1990
Jefferson.....	Roanoke 24011.....	1985	1986

	Headquarters location ¹	Fiscal year to be filed	
		DEIS ²	FEIS ³
R-9 EASTERN REGION, 633 WEST WISCONSIN AVENUE, MILWAUKEE, WISCONSIN 53203			
Regional Guide.....		1981	1983
Illinois:			
Shawnee.....	Harrisburg 62946.....	1985	1987
Indiana and Ohio:			
Wayne-Hoosier ⁴	Bedford 47421.....		
Wayne.....		1987	1988
Hoosier.....		1984	1985
Michigan:			
Hiawatha.....	Escanaba 49829.....	1985	1987
Huron-Manistee ⁴	Cadillac 49601.....	1985	1986
Ottawa.....	Ironwood 49938.....	1986	1987
Minnesota:			
Chippewa.....	Cass Lake 56633.....	1985	1986
Superior.....	Duluth 55801.....	1985	1986
Missouri:			
Mark Twain.....	Rolla 65401.....	1985	1986
New Hampshire and Maine:			
White Mountain.....	Laconia, NH 03246.....	1985	1986
Pennsylvania:			
Allegheny.....	Warren 16365.....	1985	1986
Vermont:			
Green Mountain.....	Rutland 05701.....	1986	1987
West Virginia:			
Monongahela.....	Elkins 26241.....	1985	1986
Wisconsin:			
Chequamegon.....	Park Falls 54552.....	1985	1986
Nicolet.....	Rhineland 54501.....	1985	1986
R-10 ALASKA REGION, FEDERAL OFFICE BUILDING, P.O. BOX 1628, JUNEAU, ALASKA 99802			
Regional Guide.....		1981	1984
Alaska:			
Chugach.....	Anchorage 99502.....	1982	1984
Tongass-Chatham.....	Sitka 99835.....	⁵ 1989	⁶ 1991
Tongass-Ketchikan.....	Ketchikan 99901.....	⁵ 1989	⁶ 1991
Tongass-Stikine.....	Petersburg 99833.....	⁵ 1989	⁶ 1991

¹ Mailing address for each National Forest.² DEIS and FEIS mean Draft and Final Environmental Impact Statement.³ Supplemental EIS.⁴ Two or more separately proclaimed National Forests.⁵ Filed with EPA in FY 1989.⁶ One EIS for the revision of the current plan will be filed for the Tongass National Forest.

Part B—Bureau of Land Management

Resource management planning for the Bureau of Land Management administered lands is governed by regulations 43 CFR Parts 1601 and 1610. Those regulations (43 CFR 1610.2(b)) require that the Bureau publish a planning schedule advising the public of the status of plans in preparation and projected new starts for the three succeeding fiscal years and calling for public comment on the projected new starts. The schedule below fulfills that requirement. Some plan amendments

will be prepared in fiscal years 90, 91, and 92 to address oil and gas issue.

The planning process begins with the publication of a Notice of Intent to initiate a plan. The projected planning starts are shown on the schedule through 1992. Public notice and opportunity for participation in each resource management plan (RMP) shall be provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

DATE: Comments on the schedule will be accepted until March 20, 1989.

ADDRESS: Comments should be sent to: Director (760), Bureau of Land Management, Premier Building, Room 906, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT:

René D. McCray, (202) 653-8824.

Robert F. Burford,
Director.

Date: February 10, 1989.

BUREAU OF LAND MANAGEMENT, PLANNING SCHEDULE

State, district, and resource area	Plan name and type (major resource/ issues)	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
Alaska:					
Anchorage.....	Kuskokwim/Lower Yukon RMP (Minerals).....				PPC/NOI
	Southern RMP (Recreation, Wildlife).....				PPC/NOI

BUREAU OF LAND MANAGEMENT, PLANNING SCHEDULE—Continued

State, district, and resource area	Plan name and type (major resource/ issues)	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
Arctic	Utility Corridor RMP (Wildlife, Recreation, State Land Selection, Energy-Minerals Transportation).	PRMP/FEIS ARMP/ROD			
Glennallen.....	South Central NOI.....	NOI DRMP/DEIS PRMP/FEIS	PRMP/FEIS	ARMP/ROD	
Steese/White Mtn.....	Fort Greely RMP (Military Withdrawal, Recreation).	PRMP/FEIS	ARMP/ROD		
	Fort Wainwright RMP (Forestry, Recreation, Military Defense, Minerals).	PRMP/FEIS	ARMP/ROD		
	Fortymile/Black River RMP (Placer Gold, Recreation, Wildlife).				PPC/NOI
Arizona:					
Arizona Strip Districtwide.....	Arizona Strip RMP (Realty, Off-Road Vehicles, Recreation, Cultural Resources Mgmt.).		PRMP/FEIS	ARMP/ROD	
Phoenix Kingman.....	Kingman RMP (Realty, ACEC, Range/ Grazing, Wildlife).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Lower Gila.....	Lower Gila North RMP (Realty, Recreation).		PPC/NOI	DRMP/DEIS	PRMP/FEIS
Phoenix.....	Phoenix RMP (Realty, ACEC, Recreation, Range).	PRMP/FEIS ARMP/ROD			
Safford Districtwide.....	Safford RMP (Recreation, Off-Road Vehicles, ACEC, Range).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
California:					
Bakersfield Bishop.....	Bishop RMP (Range, Realty, Geothermal)	DRMP/DEIS	PRMP/FEIS ARMP/ROD DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Caliente.....	Caliente RMP (O&G, Land Tenure Adjustments).	PPC/NOI			
Folsom.....	Folsom RMP (O&G).....				PPC/NOI
Hollister.....	Hollister RMPA (O&G).....		PPC/NOI	DRMPA/DEIS	PRMPA/FEIS ARMPA/ROD
California Desert Indio.....	Metro RMP (O&G, Realty, Forestry, Recreation).	PPC/NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Ukiah Clear Lake.....	Clear Lake RMP (O&G).....			PPC/NOI	DRMP/DEIS
Eureka.....	Arcata RMP (Realty, Forestry)	PRMP/FEIS ARMP/ROD			
Redding.....	Redding RMP (O&G, Realty, Forestry, Recreation).	PPC/NOI DRMP/DEIS.....	PRMP/FEIS	ARMP/ROD	
Susanville Alturas.....	Alturas RMP (Grazing, Wildlife).....	PPC/NOI	DRMP/DEIS	PRMP/FEIS PPC/NOI	ARMP/ROD DRMP/DEIS
Eagle Lake.....	Eagle Lake RMP (Grazing, O&G, Recreation).				
Surprise.....	Surprise RMP (Grazing, Wildlife).....				PPC/NOI
Colorado:					
Canon City Northeast.....	Combined RMPA (O&G).....	PPC/NOI	DRMPA/DEIS PRMPA/FEIS ARMPA/ROD		
Craig Kremmling Little Snake Grand Junction Glennwood Springs Montrose San Juan Canon City Royal Gorge.....	Royal Gorge RMP (Range, Realty, O&G, Recreation).	PPC/NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
San Luis.....	San Luis RMP (Realty, Range, Wildlife).....	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Craig Little Snake.....	Little Snake RMP [Revision] (Coal, Range, Recreation, Wild & Scenic Rivers).	PRMP/FEIS			
White River.....	White River RMP (O&G)		PPC/NOI	DRMP/DEIS	PRMP/FEIS
Grand Junction Grand Junction.....	Grand Junction RMPA (Wilderness)	RMPA/FEIS			
Montrose Gunnison.....	Gunnison Basin RMP (Range, Wildlife, Riparian, Recreation).		DRMP/DEIS PRMP/FEIS	ARMP/ROD	
San Juan.....	San Juan/San Miguel RMPA (Wilderness)....	FEIS			
Uncompahgre.....	Uncompahgre RMP (Coal, Recreation,	PRMP/FEIS ARMP/ROD			

BUREAU OF LAND MANAGEMENT, PLANNING SCHEDULE—Continued

State, district, and resource area	Plan name and type (major resource/ issues)	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
Idaho:					
Statewide	Plan Amendments MFPA (Wilderness— Areas less than 5,000 acres).	PMFPA/FEIS			
Boise					
Bruneau	Bruneau RMP (Realty, Recreation)			PPC/NOI	DRMP/DEIS
Jarbridge	Jack Creek MFPA (Wilderness)	PRMPA/FEIS			
Owyhee	Jarbridge RMPA (Wilderness)	PRMPA/FEIS			
	Owyhee/Canyonlands MFPA (Wilderness)	FEIS			
	Owyhee RMP (Range, Wildlife)	PPC/NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Burley					
Deep Creek	Deep Creek RMP (Realty)			PPC/NOI	DRMP/DEIS
Coeur Dalene					
Cottonwood	Chief Joseph RMP (Realty, Forestry, Timber)				PPC/NOI
	Emerald Empire RMP (Realty, Forestry/ Timber)				PPC/NOI
Idaho Falls					
Big Butte	Big Butte RMP (Realty, Range)			PPC/NOI	DRMP/DEIS
Salmon					
Challis-Mackay	Challis RMP (Realty, Range)		PPC/NOI	DRMP/DEIS	PRMP/FEIS
Shoshone					
Bennett Hills	Bennett Hills RMP (Range, Recreation)	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Monument	Monument RMPA (ACEC)	PRMPA/FEIS			
Montana:					
Butte					
Dillon	Centennial MFPA (Wilderness)		PMFPA/FEIS		
	Dillon RMP (O&G)	PPC/NOI	DRMP/DEIS	PRMP/FEIS	
Headwaters	Headwaters RMPA (Sleeping Giant EIS Amend.; Wilderness)	RMPA/DEIS	PRMPA/FEIS		
Lewistown					
Judith	Judith/Phillips/Valley RMP (O&G, Realty, Off-Road Vehicle)		DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Valley	Bitter Creek MFPA (Wilderness)	PMFPA/FEIS			
Miles City					
Districtwide	Miles City RMPA (O&G)	PPC/NOI	DRMPA/DEIS	ARMPA/ROD	
			PRMPA/FEIS		
Big Dry	Big Dry RMP (Land Tenure Adjust., Off-Road Vehicles)	PPC/NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Nevada:					
Battle Mountain					
Shoshone-Eureka	Shoshone-Eureka RMPA (O&G)		PPC/NOI	DRMPA/DEIS	RMPA/FEIS
					ARMPA/ROD
Tonopah	Tonopah RMP (O&G, Non-Energy Realty)	PPC/NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Carson City					
Lahontan	Lahontan RMPA (O&G)				PPC/NOI
Elko					
Elko	Elko RMPA (O&G)		PPC/NOI	DRMPA/DEIS	RMPA/FEIS
					ARMDA/ROD
	Wells RMPA (O&G)				PPC/NOI
Ely					
Egan	Egan RMPA (O&G, Minerals)	PPC/NOI	DRMPA/DEIS	PRMPA/FEIS	ARMPA/ROD
Schell	Schell RMP (O&G)				PPC/NOI
Las Vegas					
Caliente	Nellis RMP (Nat'l Defense, Wild Horses, Wildlife)	DRMP/DEIS	PRMP/FEIS		
			ARMP/ROD		
Stateline	Clark County RMP (Realty, Non-Energy Realty)		PPC/NOI	DRMP/DEIS	PRMP/FEIS
	Plan Amendments MFPA (Wilderness, Areas less than 5,000 acres).	PMFPA/FEIS			
Winnemucca					
Sonoma-Gerlach	Sonoma-Gerlach RMP (Non-Energy Realty)			PPC/NOI	DRMP/DEIS
New Mexico:					
Albuquerque					
Districtwide	Farmington RMPA (O&G)	PPC/NOI	DRMP/DEIS	PRMP/FEIS	
Mimbres					
Mimbres	Mimbres RMP (Off-Road Vehicles, Lands, Mineral Materials)			DRMP/DEIS	PRMP/FEIS
					ARMP/ROD
Socorro	Socorro RMP (Range, Realty, Off-Road Vehicles, Coal)	ARMP/ROD			
White Sands	White Sands RMP (MacGregor Amend.; Access, Off-Road Vehicles)	DRMP/FEIS	ARMP/ROD		
Roswell					
Roswell	Carlsbad RMPA (O&G)	PPC/NOI	DRMPA/DEIS	PRMPA/FEIS	ARMPA/ROD
	Roswell RMP (O&G, Mineral Leasing, Off-Road Vehicles)	PPC/NOI		DRMP/DEIS	PRMP/FEIS
Tulsa					
Oklahoma	Kansas RMP (O&G)	PPC/NOI	DRMP/DEIS	ARMP/ROD	
			PRMP/FEIS		

BUREAU OF LAND MANAGEMENT, PLANNING SCHEDULE—Continued

State, district, and resource area	Plan name and type (major resource/ issues)	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
	Oklahoma RMP (O&G, Coal Leasing).....		PPC/NOI	DRMP/DEIS PRMP/FEIS	ARMP/ROD
	Texas RMP (O&G, Coal Leasing).....			PPC/NOI	DRMP/FEIS PRMP/FEIS
Oregon:					
Statewide	Oregon Statewide MFPA (Wilderness).....	PMFPA/FEIS			
Burns					
Andrews	Andrews RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros).		PPC/NOI	DRMP/DEIS PRMP/FEIS	ARMP/ROD
Three Rivers	Three-Rivers RMP (Range/Grazing, Wildlife, Water Realty).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Coos Bay Districtwide	Coos Bay RMP (Forestry, Water, Wildlife, Realty, ACEC).		DRMP/FEIS	PRMP/FEIS ARMP/ROD	
Eugene Districtwide	Eugene RMP (Forestry, Water, ACEC, Realty).		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Lakeview Lakeview	Lakeview RMP (Range/Grazing, Wildlife, Water, Wild Horses & Burros).		PPC/NOI	DRMP/DEIS	PRMP/FEIS
Medford Districtwide	Medford RMP (Forestry, Wildlife, Water, Realty, ACEC).		DRMP/DEIS	PRMP/FEIS ARMP/ROD PRMP/ROD	
Klamath	Klamath Falls RMP (Timber,.....)	PPC/NOI	DRMP/DEIS		
Prineville					
Central Oregon	Two Rivers/John Day RMP (O&G, Recreation, Realty, Water Wild & Scenic Rivers).		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Central Oregon/Deschutes	Brothers-LaPine RMP (Forestry, Realty, Water, Off-Road Vehicles).	PRMP/FEIS ARMP/ROD			
Roseburg Districtwide	Roseburg RMP (Forestry, Wildlife, Water, Realty, ACEC).		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Salem Districtwide	Salem RMP (Forestry, Wildlife, Water, Realty).		DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Spokane Districtwide	Spokane RMPA (O&G).....	PPC/NOI	DRMP/DEIS	PRMP/FEIS ARMP/ROD	
Vale					
Baker	Baker RMP (Grazing, Wildlife, Recreation, Forestry).	ARMP/ROD			
N. Malheur	Malheur RMP ((No. Malheur) Range, Wildlife, Water, Realty).				PPC/NOI
Utah:					
Cedar City Dixie	Dixie RMP (O&G, Realty, Recreation, ACEC).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Kanab	Kanab RMP (Recreation, Watershed).....		PPC		NOI
Moab					
Price River	Price River RMP (O&G, Recreation, Minerals, Wildlife, Watershed).			PPC	NOI
San Juan	San Juan RMP (Livestock, O&G, Recreation, Lands).	ARMP/ROD			
San Rafael	San Rafael RMP (Livestock, O&G, Coal, Recreation).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Richfield					
Henry Mountain	Henry Mountain RMP (ACEC, Wildlife).....	PPC	NOI		DRMP/DEIS
Salt Lake					
Pony Express	Pony Express RMP (O&G, Range, Lands, Minerals).	ARMP/ROD			
Vernal					
Book Cliffs	Book Cliffs RMPA (O&G).....		PPC/NOI	DRMP/DEIS PRMP/FEIS DRMP/DEIS PRMP/FEIS	ARMP/ROD
Diamond Mountain	Diamond Mountain RMP (Wildlife, O&G).....		NOI		
Wyoming:					
Casper					
Buffalo	Buffalo RMPA (O&G).....			PPC/NOI	DRMP/DEIS PRMP/FEIS ARMP/ROD
Newcastle	Newcastle RMP (O&G).....	PPC/NOI	DRMP/DEIS	PRMP/FEIS	
Rawlins					
Lander	Whiskey Mountain, DuBois, Badlands RMPA (Wilderness: Area less than 5000 acres).	DRMP/DEIS PRMP/FEIS			
Medicine Bow/Divide	Great Divide RMP (Range, Wildlife, Recreation, O&G).	PRMP/FEIS ARMP/ROD			
Rock Springs					
Green River	Green River RMP (O&G, Range, Wild Horses, Archeological).		DRMP/DEIS	PRMP/FEIS	ARMP/ROD

BUREAU OF LAND MANAGEMENT, PLANNING SCHEDULE—Continued

State, district, and resource area	Plan name and type (major resource/ issues)	Fiscal year 1989	Fiscal year 1990	Fiscal year 1991	Fiscal year 1992
Pinedale	Pinedale RMP (Range, O&G, Lands, Forestry).	ARMP/ROD			
Worland					
Cody	Cody RMP (O&G, Range)	ARMP/ROD			
Grass Creek	Grass Creek RMP (Wildlife, Watershed)		PPC/NOI	DRMP/DEIS	PRMP/REIS

Key to abbreviations: ARMP—Approved Resource Management Plan; DEIS—Draft Environmental Impact Statement; DMFPA—Draft Management Framework Plan Amendment; DRMP—Draft Resource Management Plan; DRMPA—Draft Resource Management Plan Amendment; FEIS—Final Environmental Impact Statement; MFPA—Management Framework Plan Amendment; NOI—Notice of Intent; O&G—Oil and Gas; PMFPA—Proposed Management Framework Plan Amendment; PPC—Preplanning Contract; PRMP—Proposed Resource Management Plan; PRMPA—Proposed Resource Management Plan Amendment; ROD—Record of Decision; RMP—Resource Management Plan; RMPA—Resource Management Plan Amendment.

[FR Doc. 89-3591 Filed 2-15-89; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held March 8, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1617F, 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 (Numerically Controlled Machines).
5. Discussion of CCL 1532 (Inspection Machines).
6. Discussion of CCL 1399 (Automatically Controlled Industrial Systems).
7. Discussion of Sensory Control Systems.
8. Presentation by Office of Foreign Availability.

Executive Session

9. 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 Subcommittees 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 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: February 13, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit,
Office of Technology and Policy Analysis.

[FR Doc. 89-3636 Filed 2-15-89; 8:45 am]

BILLING CODE 3510-DT-M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Computer System Security and Privacy Advisory Board will be held March 1 and 2, 1989. The Computer System Security and Privacy Advisory Board was established

to advise the Secretary of Commerce and NIST on security and privacy issues pertaining to Federal computer systems.

DATES: The meeting will be held on March 1 from 8:30 a.m. to 3:00 p.m. and March 2, 1989 from 8:30 a.m. to 4:00 p.m. The meeting will take place at the Maritime Institute of Technology and Graduate Studies, 5700 Hammonds Ferry Road, Linthicum Heights, Maryland. The agenda:

1. Introduction of Members and Visitors.
2. Introduction of Invited Guests.
3. Organization of Board.
4. Discussion of Federal Government Computer Security Issues.
5. Discussion of Threats to Unclassified Information Processed by Federal Government Computers.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director, Computer Security, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, Room B-154, Gaithersburg, MD 20899, telephone: (301) 975-3240.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and time will be provided on March 1 for oral comments or questions. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come first-served basis. Written statements may be submitted to the Board at any time before or after the meeting and can be directed to: National Computer Systems Laboratory, Building 225, Room B-154, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

Raymond G. Kammer,
Acting Director.

Date: February 10, 1989.

[FR Doc. 89-3632 Filed 2-15-89; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Limit on Silk Blend and Other Vegetable Fiber Luggage in Category 870 Produced or Manufactured in Thailand

February 13, 1989.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Issuing a directive to the
Commissioner of Customs cancelling a
limit.

EFFECTIVE DATE: February 21, 1989.

FOR FURTHER INFORMATION CONTACT:
Ross Arnold, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854).

The United States Government has
decided to cancel the outstanding
request to consult on imports of luggage
in Category 870. Therefore, the limit
established for Category 870 is being
cancelled.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 53 FR 44937,
published on November 7, 1988). Also
see 53 FR 49903, published on December
12, 1988.

James H. Babb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

**Committee for the Implementation of Textile
Agreements**

February 13, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC
20229.

Dear Mr. Commissioner: Effective on
February 21, 1989 this directive cancels only
that portion of the directive issued to you on
December 6, 1988 by the Chairman,
Committee for the Implementation of Textile
Agreements, which established a restraint
limit for silk blend and other vegetable fiber
luggage in Category 870, produced or
manufactured in Thailand and exported
during the period which began on May 25,
1988 and extends through May 24, 1989.

The Committee for the Implementation of
Textile Agreements has determined that this
action falls within the foreign affairs
exception to the rulemaking provisions of 5
U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

[FR Doc. 89-3634 Filed 2-15-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of a Request for Bilateral Consultations With the Government of Thailand on Certain Cotton and Man-Made Fiber Textile Products

February 10, 1989.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377-4212. For information on
categories on which consultations have
been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March
3, 1972, as amended; section 204 of the
Agricultural Act of 1956, as amended (7
U.S.C. 1854); Article 3 of the Arrangement
Regarding International Trade in Textiles.

On January 30, 1989, the Government
of the United States requested
consultations with the Government of
Thailand regarding cotton/polyester
yarn in Categories 301pt./607pt.,
produced or manufactured in Thailand.

The purpose of this notice is to advise
the public that, if no solution is agreed
upon in consultations with Thailand, the
Committee for the Implementation of
Textile Agreements may later establish
a limit for the entry and withdrawal
from warehouse for consumption of
cotton/polyester yarn in Categories
301pt./607pt., produced or manufactured
in Thailand and exported during the
twelve-month period which began on
January 30, 1989 and extends through
January 29, 1990, at a level of 2,907,527
kilograms.

A summary market statement
concerning these categories follows this
notice.

Anyone wishing to comment or
provide data or information regarding
the treatment of Categories 301pt./
607pt., or to comment on domestic
production or availability of products
included in these categories, is invited to
submit 10 copies of such comments or
information to James H. Babb,
Chairman, Committee for the
Implementation of Textile Agreements,
U.S. Department of Commerce,
Washington, DC 20230.

Because the exact timing of the
consultations is not yet certain,
comments should be submitted
promptly. Comments or information
submitted in response to this notice will
be available for public inspection in the
Office of Textiles and Apparel, Room
H3100, U.S. Department of Commerce,
14th and Constitution Avenue, NW.,
Washington, DC.

Further comment may be invited
regarding particular comments or
information received from the public
which the Committee for the
Implementation of Textile Agreements
considers appropriate for further
consideration.

The solicitation of comments
regarding any aspect of the agreement
or the implementation thereof is not a
waiver in any respect of the exemption
contained in 5 U.S.C. 553(a)(1) relating
to matters which constitute "a foreign
affairs function of the United States."

The United States remains committed
to finding a solution concerning
Categories 301pt./607pt. Should such a
solution be reached in consultations
with the Government of Thailand,
further notice will be published in the
Federal Register.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the
CORRELATION: Textile and Apparel
Categories with the Harmonized Tariff
Schedule of the United States (see
Federal Register notice 53 FR 44937,
published on November 7, 1988).

James H. Babb,

*Chairman, Committee for the Implementation
of Textile Agreements.*

January 1989.

Market Statement

*Category 301 Part/607 Part—Cotton and
Polyester Blended Yarns*

Summary and Conclusions

U.S. imports of fine count cotton and
polyester blended sales yarn—Category
301 Part/607 Pt. — from Thailand were
8.2 million pounds during the year
ending November 1988, more than
double the 3.9 million pounds imported a
year earlier. Thailand is the second
largest supplier of these yarns,
accounting for 20 percent of the total
imports. During the first eleven months
of 1988, imports from Thailand were 7.6
million pounds, nearly double the 3.9
million pounds imported a year earlier.

The U.S. market for fine count cotton
and polyester blended sales yarns is
being disrupted by the sharp and
substantial increase of low-valued fine
count yarn imports from Thailand.

Production and Market Share

U.S. production of fine count combed cotton and polyester blended sales yarns dropped from 67.6 million pounds in 1986 to 53.7 million in 1987, a 21 percent decline. During the first ten months of 1988, production dropped 12 percent below the level in the comparable period of 1987.

The U.S. producers' share of the market for domestically produced and imported fine count cotton and polyester blended sales yarns declined from 63 percent in 1986 to 58 percent in 1987. The U.S. producers' share continued its decline during the first ten months of 1988, dropping to 55 percent.

Imports and Import Penetration

U.S. imports of Category 301 Pt./607 Pt. from all sources reached 40.8 million pounds during the year-ending November 1988, five percent above the 38.8 million pounds imported a year earlier. During the first 11 months of 1988, imports of fine count cotton and polyester blended yarns were up seven percent over the comparable period in 1987.

The ratio of imports to domestic production increased by 13 percentage points in just one year, increasing from 59 percent in 1986 to 72 percent in 1987. The ratio increase another 10 percentage points, reaching 82 percent during the first 10 months of 1988.

Duty-Paid Import Value and U.S. Producers' Price

During the period January-October 1988, 87 percent of Thailand's imports of cotton and polyester blended yarns entered under TSUSA Nos. 300.6025—combed singles of 30 or coarser and 300.6027 other combed single yarns. The duty-paid landed values of these imports from Thailand are below the U.S. producers' prices for comparable yarns.

[Fr Doc. 89-3635 Filed 2-15-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations; Cancelled Meeting**

ACTION: Cancellation of meeting.

SUMMARY: The meeting of notice for the Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations scheduled for February 3, 1989 as published in the Federal Register (Vol. 53, No. 238, Page

49907, Monday, December 12, 1988, FR Doc 88-28508.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 13, 1989.

[FR Doc. 89-3687 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for August 30, 1988 as published in the Federal Register (Vol. 53, No. 80, Page 14833-14834, Tuesday, April 26, 1988, FR Doc 88-9135.) was cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 13, 1989.

[FR Doc. 89-3743 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Cancellation Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for November 17, 1988 as published in the Federal Register (Vol. 53, No. 183, Page 36615, Wednesday, September 21, 1988, FR Doc 88-21559.) was cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 13, 1989.

[FR Doc. 89-3744 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force**Intent To Prepare a Draft Environmental Impact Statement**

The United States Air Force intends to prepare an environmental impact statement (EIS) on its proposal to establish the Cypress Military Operations Area (MOA) in southern Florida.

The purpose of this proposal is to establish a MOA in southern Florida to support the conversion of the 31st Tactical Training Wing (31 TTW), Homestead Air Force Base, Florida, to an operational unit—31st Tactical

Fighter Wing (31 TFW). This conversion to an operational unit has resulted in assigned pilots being required to develop and maintain proficiency in low altitude air-to-air tactics, low altitude air-to-surface tactics, and low altitude threat awareness. Increasing low altitude adversary capabilities and proliferating deployment of adversary offensive and defensive systems dictate an increased emphasis on US Air Force low altitude operational capability; therefore, training missions are required for proficiency to operate worldwide, and especially in support of the NATO commitment recently assigned to the 31 TFW.

The establishment of a MOA is southern Florida evolved from the Federal Aviation Administration (FAA) and USAF directives which require low altitude missions to be conducted in approved special use airspace (SUA), which is published on aeronautical charts. A MOA is the most appropriate type of SUA. It establishes vertical and lateral dimensions within which all these types of activities (low altitude) are permitted while causing the minimum possible impact on the aviation public. Low altitude maneuvers (i.e. intercepts), currently performed over water, are restricted by safety due to lack of a horizon and visual depth perception. Thus, an overland MOA is required. Presently, there is no established overland MOA, or other overland SUA, which is within an economical flight distance of Homestead AFB and available for the required missions. The nearest overland SUA is the Avon Park range complex which contains restricted airspace. This range complex is designed for ordnance delivery missions, and it is already heavily committed in that regard. While some non-hazardous events are flown in Avon Park range complex, scheduling cannot accommodate additional 31 TFW requirements without unacceptably derogating ordnance delivery training. Furthermore, stated FAA policy discourages use of restricted areas for non-hazardous training. Additionally, the proposed MOA would be capable of supporting 20 percent of the non-hazardous training performed by the 56th Tactical Training Wing (56 TTW), MacDill AFB, Florida. This will help relieve Avon Park and its associated airspace from current saturation.

The unit's low altitude training requirements will be implemented locally in accordance with applicable regulations and training directives. For routine daily training, the low altitude training operations are required intermittently between 0730 and 2100

hours Monday through Friday and occasionally Saturday and Sunday. Actual use would average ten 30-minute periods (5 hours) per day when the weather is 3,000 feet ceiling and 5 statute mile visibility or better. For periodic exercises, it is anticipated that the MOA will be required approximately 8 hours per day for up to 10 consecutive days, twice per year. During daily training and exercises, training will normally consist of flights of two to four fighter aircraft: F-16, F-15 and F-4. Large cargo and bomber type of aircraft are not expected to participate. During the published times, MOA airspace will be "called up" (requested from the air traffic control facility) as needed to contain the participating aircraft flight profiles. The entire published lateral limits will routinely be requested, since the lateral maneuvering space is relatively limited in this proposal. All sorties are expected to require the entire lateral MOA limits. This will preclude spilling out of the airspace while providing as much lateral geometry as possible for maneuvers. Vertically, MOA airspace will be requested in accordance with a sortie's individual requirements. Vertical requests may be equal to or less than the MOA's published vertical limits. Vertical limits which are not requested will remain available to the air traffic controlling facility.

The environmental analysis will include such topics as impact to the flora and fauna, noise levels, air quality and other pertinent topics raised during the scoping process. Exact time and place of the scoping meetings will be announced in the local news media and by direct contact to organizations that have expressed an interest in attending. Participation in the environmental analysis process by interested private organizations and individuals is invited.

It is estimated that the draft EIS will be available for public review in February 1989.

Questions concerning the proposal, scoping meeting or the draft EIS may be directed to Mr. Alton Chavis, HQ TAC/DEEV, Langley AFB, VA 23665-5542, (804) 764-4430.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-3603 Filed 2-15-89; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: March 6, 1989.

Time of Meeting: 0800-1700 Hours.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Family Programs will be hosted by the Deputy Chief of Staff for Personnel, Headquarters, Department of the Army. The subgroup will be meeting to prepare their final report. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-3641 Filed 2-15-89; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: March 6 and 7, 1989.

Time: 0800-1700 hours each day.

Place: Fort Stewart, Georgia.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its next meeting at which time the panel will hold discussions and receive briefings from personnel in operational units with air and ground experience in combating human error accidents. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-3642 Filed 2-15-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5

U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet February 28, and March 1, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because operational necessity constitutes an exceptional circumstance, not allowing for 15 days' notice of this meeting.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: February 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-3587 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet March 21-22, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically

authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: February 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-3588 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet April 24-28, 1989 from 9 a.m. to 5 p.m. each day, in Lexington, Massachusetts. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Date: February 13, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-3589 Filed 2-15-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Electrochemical Technical Corp.

AGENCY: Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15433 to Electrochemical Technology Corporation (ETC) to assist in the development of the invention entitled "Improved Methods to Manufacture and Use Carbon-Alumina Composite Anodes for Aluminum Reduction."

Scope: This Grant will aid in providing funding for a comprehensive well-integrated plan as follows: (1) Design and assemble an anode fabrication facility and 300 amp. test cell; (2) produce anode blocks of the contemplated new design; and (3) initiate testing of the blocks in the cell to prove the concept and improve the design.

The purpose of this project will be the initial development and testing of a new anode design, initiate the development of a technological improvement which will result in a reduction in national electrical energy consumption, possibly as much as 2 percent. The anticipated objective is the operation of the new anode under conditions which will prove the validity and indicate the magnitude of energy saving possible.

Eligibility: Based on receipt of an unsolicited application, eligibility of this award is being limited to ETC, a private corporation with high qualifications in this specialized field of technology. The President of ETC, Dr. Theodore R. Beck, is the inventor, principal investigator and the patent holder of the modified anode design. ETC will subcontract work to Brooks Rand, Ltd., a private company which specializes in chemical process development and has the facilities required for the pilot scale development. Mr. Richard Brooks, President of Brooks Rand, Ltd., has more than 30 patents in chemical process technology and has jointly, with Dr. Beck, made engineering and economic

studies on this new anode technology. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Lisa Tillman, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585. Scott Sheffield,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-3676 Filed 2-15-89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

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: Wednesday, March 1, 1989:

1:00 p.m. to 5:00 p.m.

8:00 p.m. to 10:00 p.m.

Place: Solar Energy Research Institute, Denver West Office Park, 1617 Cole Boulevard, Building 17, 4th Floor Conference Room A, Golden, Colorado 80401.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue SW., Washington, DC 20585, 202/586-1770.

Purpose of the Committee: 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: March 1, 1989:

1:00-5:00—Presentations and Discussion of Rocky Flats Plants Issues; Subcommittee Reports; Committee Business

5:00-8:00—Break

8:00-10:00—Public Comment

Public Participation: This meeting is open to the public. Written statements 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 address 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 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 February 13, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-3680 Filed 2-15-89; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order with DeMenno-Kerdoon

AGENCY: Economic Regulatory Administration, Department of Energy.
ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives the notice required by 10 CFR 205.199j that it has adopted as final the proposed Consent Order with DeMenno-Kerdoon executed on September 30, 1988. Notice of Proposed Consent Order was published for comment in 53 FR 44648 on November 4, 1988. The Consent Order resolves matters relating to DeMenno-Kerdoon's compliance with the federal petroleum price and allocation regulations for the period August 19, 1973, through January 27, 1981. To resolve these matters, DeMenno-Kerdoon will pay a minimum of \$150,000 plus interest, as well as specified percentages of its annual adjusted net income for the next five consecutive fiscal years beginning November 1, 1989. The percentages of its annual adjusted net income which DeMenno-Kerdoon must pay range up to 40% of all adjusted net income in excess of \$5 million.

As required by 10 CFR 295.199j, DOE provided a period of thirty days following publication of the Notice of Proposed Consent Order for the submission of comments. The ERA received no comments in response to

this notice. Accordingly, ERA has determined that the Consent Order should be made final without modification. The Consent Order becomes effective as a Final Order of the DOE on the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., RG-30, Washington, DC 20585, (202) 586-8900.

Copies of the Consent Order may be obtained in person at DOE's Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On November 4, 1988, DOE published notice in the Federal Register, Vol. 53 at page 44648, announcing the execution of a proposed Consent Order between DeMenno-Kerdoon and DOE which would resolve matters relating to DeMenno-Kerdoon's compliance with federal petroleum price and allocation regulations for the period August 19, 1973, through January 27, 1981. The Consent Order, which requires DeMenno-Kerdoon to pay a minimum of \$150,000 plus interest, as well as specified percentages of its annual adjusted net income for the next five consecutive years beginning November 1, 1989, is for the settlement of DeMenno-Kerdoon's maximum potential liability of approximately \$8.7 million plus interest. Under the terms of the Consent Order, DeMenno-Kerdoon will pay \$25,000 within thirty (30) days of the effective date of the Consent Order. Further scheduled payments totalling \$125,000 will be made in thirty-five (35) equal monthly installments commencing on the first day of the next full month following the due date of the initial payment, plus interest set at 8.61% per annum. DeMenno-Kerdoon will also pay specific percentages of its adjusted net income in excess of a prescribed minimum amount for the next five consecutive fiscal years beginning November 1, 1989. DeMenno-Kerdoon's total payment will not exceed \$3 million. After the initial payment is made, ERA will petition the DOE's Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V for appropriate distribution of the monies paid.

The November 4, 1988 Notice provided in detail the bases for ERA's preliminary view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of

the settlement and whether the terms and conditions of the settlement and whether the settlement should be made final. As noted, no comments were received in response to the Notice of the proposed Consent Order. Accordingly, ERA has determined to adopt the proposed Consent Order without modification as a final order of the DOE, pursuant to 10 CFR 205.199j. The Consent Order becomes effective upon publication of this Notice.

Issued in Washington, DC on February 9, 1989.

Milton C. Lorenz,

Chief Counsel, Office of Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 89-3678 Filed 2-15-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee (MFAC)

Date and Time: Tuesday, March 7, 1989, 8:30 am-5:00 pm. Wednesday, March 8, 1989, 8:30 am-12:00 pm.

Location: University of Texas Austin Campus, Joe C. Thompson Conference Center, Room 2.102, 26 and Red River, Austin, Texas 78712.

Contact: Michael Crisp, Office of Fusion Energy (OFE), Office of Energy Research, ER-51, U.S. Department of Energy, Mail Stop J-204, Washington, DC 20545, Phone: (301)-353-4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

MFAC Agenda Outline

March 7, 1989

1. 8:30 a.m. Welcome and Announcements—G.J. Fonken.

2. FY90 Budget and OFE Programmatic Status—A. Davies, J. Auchmoody.

3. Final Report on Historically Black Colleges and Universities (Panel 23)—R. Kribel.

5. MFAC Discussion—F. Ribe.

4. Transport Task Force Report—J. Callen, D. Baldwin.

6. Public Comments (Lunch) 12:00–1:00 p.m.

7. Interim Report of the Transport and Machine Physics Panel (Panel 22)—K. Molvig.

8. MFAC Discussion—F. Ribe.

9. University of Texas Institute for Fusion Studies Program—A. Wootton.

10. Public Comments.

11. Tour of TEXT Facility—A. Wootton.

(ADJOURN 5:30 p.m.)

MFAC 2nd DAY

March 8, 1989

1. 8:30 a.m. TFTR Status—D. Meade.

2. CIT Status—H. Furth, J. Schmidt, D. Montgomery.

3. ITER Status—J. Gilleland.

4. Panel 23 Finalization—F. Ribe.

5. Public Comments (ADJOURN 12:00 NOON)

Public Participation: The meeting is open to the public. Written statements 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 Michael Crisp at the address or telephone number listed above. Requests must be received five 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.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, 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 February 13, 1989.

J. Robert Franklin,
Deputy Advisory Committee Management
Officer.

[FR Doc. 89-3679 Filed 2-15-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 10505-000 California]

Graeagle Land and Water Co.; Availability of Environmental Assessment

February 10, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the proposed Graeagle Golf Course Hydroelectric Project located on Frazier Creek in Plumas County near Graeagle, CA, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3667 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1957-003 et al.]

Hydroelectric Applications (Wisconsin Public Service Corp.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Application for New Minor License.

b. *Project No.:* 1957-003.

c. *Date filed:* June 28, 1988, and supplemented November 23, 1988.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Otter Rapids Hydro Project.

f. *Location:* On the Wisconsin River near Eagle River, Vilas County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. E.R. Mathews, Senior Vice President, Wisconsin Public Service Corporation,

700 North Adams Street, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1300.

i. *FERC Contact:* Ed Lee, (202) 376-5786.

j. *Comment Date:* April 11, 1989.

k. *Description of Project:* The existing run-of-river Otter Rapids Hydro Project consists of: (1) An existing 17-foot-high and 174-foot-long reinforced concrete dam with a 300-foot-long and 12-foot-high earthen dike abutting the north end of the dam; (2) an existing 3,916-acre reservoir having an estimated storage capacity of 42,279 acre-feet; (3) a powerhouse integral with the dam and housing two 250-kW units and one 200-kW unit for a total installed capacity of 700 kW; (4) an outdoor substation located on the south bank adjacent to the powerhouse; and (5) appurtenant facilities. The applicant estimates the average annual generation would be 2.835 MWh. All energy produced at the project would be used in the applicant's generating system. The project works are owned and operated by the applicant. The project affects approximately .37 acres of U.S. lands. The applicant does not propose any construction to any principal project works except the refurbishing of generating unit #2.

The existing project, which will expire on June 30, 1990, would also be subject to Federal take over under sections 14 and 15 of the Federal Power Act.

l. *This notice also consists of the following standard paragraphs:* A3, A9, B, C, and D1.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 3021-018.

c. *Date Filed:* January 12, 1989.

d. *Applicant:* Allegheny Hydro No. 8, L.P. and Allegheny Hydro No. 9, L.P.

e. *Name of Project:* Allegheny River Locks and Dams Nos. 8 and 9 Project.

f. *Location:* The proposed transmission line would be located in Armstrong and Indiana Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Michael G. LaRow, Allegheny Hydro No. 8, L.P., and Allegheny Hydro No. 9, L.P., Third Floor, 91 Newbury Street, Boston, MA 02116, (617) 424-1888.

i. *FERC Contact:* John E. Estep, (202) 376-9001.

j. *Comment Date:* March 16, 1989.

k. *Description of Project:* The licensee proposes to construct 38.7 miles of 138-kilovolt transmission line instead of the two short transmission lines (totaling approximately 2 miles in length) authorized by the Commission in the

order issuing the license on March 27, 1985.

l. Purpose of Project: The proposed transmission line would deliver the project's power to the New York State Electric and Gas Corporation for the term of the power purchase agreement.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 10680-000.

c. Date Filed: October 25, 1988.

d. Applicant: Bridgeport Hydraulic Company.

e. Name of Project: Saugatuck Project.

f. Location: On the Saugatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Jack E. McGregor, Bridgeport Hydraulic Company, P.O. Box 702, Bridgeport, CT 06601-2353, (203) 367-6621.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: April 14, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing 110-foot-high, 990-foot-long concrete gravity Samuel P. Senior Dam; (2) the existing 670-foot-long concrete dike which spans the of low points of Pap Mountain; (3) the existing reservoir having a surface area of 860 acres and a storage capacity of 36,600 acre-feet with a normal water surface elevation of 280 feet USGS datum; (4) one existing intake structure; (5) an existing 350-foot-long, 48-inch-diameter blowoff pipeline; (6) a proposed powerhouse containing one generating unit with an installed capacity of 675 kW; (7) a proposed tailrace; (8) a proposed 1,000-foot-long 3 phase 60 cycle transmission line; and (9) appurtenant facilities. The proposed project would have an average annual generated of 2,800 MWh. All existing project facilities including dam are owned by the applicant.

l. Purpose of Project: All energy generated would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 10713-000.

c. Date Filed: December 19, 1988.

d. Applicant: Windsor Machinery Company, Inc.

e. Name of Project: Still River Hydroelectric Project.

f. Location: On the Still River near Brookfield in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Harry A. Terbush, 11 Orbit Lane, Hopewell Junction, NY 12533, (914) 879-4194.

i. FERC Contact: Mary Nowak, (202) 376-9634.

j. Comment Date: April 14, 1989.

k. Description of Project: The proposed project would consist of the following facilities: (1) An existing steel reinforced concrete dam 8.5 feet high and 39 feet long; (2) an existing reservoir approximately 30,600 square feet with a storage capacity of approximately 122,400 cubic feet at a normal surface elevation of 250.3 feet; (3) an existing penstock 15.5 feet long and 36 inches in diameter; (4) a new powerhouse containing one generating unit at approximately 75 kilowatts; and (5) appurtenant facilities. The existing dam is owned jointly by Lois Hunt and Alvin J. Tuck. The applicant estimates that the cost of the studies under permit would be about \$16,500. The applicant estimates that average annual generation is 250,000 kilowatt hours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

*A3. Development Application—*Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

*A5. Preliminary Permit—*Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A7. Preliminary Permit—*Any qualified development applicant

desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A9. Notice of intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed Scope of Studies under Permit—*A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and Service of Responsive Documents—*Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub.L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to

file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 13, 1989.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3668 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9491-002 Oregon]

Fall Creek Associates; Surrender of Preliminary Permit

February 10, 1989.

Take notice that Fall Creek Associates, permittee for the Fall Creek Project, located on Fall Creek in Lane County, Oregon has requested that its preliminary permit be terminated. The preliminary permit was issued on May 30, 1986, and would have expired on April 30, 1989. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on May 2, 1988, and the preliminary permit for Project No. 9491 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3669 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-63-000]

Southern Natural Gas Co.; Proposed Change in FERC Gas Tariff

February 10, 1989.

Take notice that on February 3, 1989, Southern Natural Gas Company (Southern) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective February 3, 1989:

Fourth Revised Sheet No. 45R.13

Southern states that it submits the tariff sheet listed above to revise the General Terms and Conditions for Rate

Schedules FT and IT to provide for the uniform pro rata curtailment of firm transportation services. Southern states that this revision recognizes the character of firm service in contrast to interruptible service and enhances the quality of Southern's firm transportation program. Southern has requested a waiver of the Commission's Regulations to make the revised sheet effective February 3, 1989, as indicated above.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before February 17, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3670 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1862 Washington]

City of Tacoma, Washington; Intent To File an Application for a New License

February 10, 1989.

Take notice that on December 27, 1988, the City of Tacoma, the existing licensee for the Nisqually Hydroelectric Project No. 1862, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 1862 was issued effective January 1, 1944, and expires December 31, 1993.

The project is located on the Nisqually River in Thurston, Pierce and Lewis Counties, Washington. The principal works of the Nisqually Project include the Alder Unit with a 300-foot-high, 1,600-foot-long concrete dam, a reservoir of 147,000 acre-feet, two steel

penstocks, a powerhouse with installed capacity of 50,000 kW, and two 3-mile-long transmission lines; and the LaGrande Unit with a 192-foot-high, 710-foot-long concrete dam, a reservoir of 10,000 acre-feet, a tunnel and surge tank, five steel penstocks, a powerhouse with installed capacity of 64,000 kW, and two 25-mile-long transmission lines; and appurtenances.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at 3628 South 35th Street, P.O. Box 11007, Tacoma, WA 98411, Attn: Mr. Garth Jackson, telephone (206) 593-8298.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3663 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-806-001]

CIBRO Petroleum Products, Inc.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

February 10, 1989.

On January 30, 1989, CIBRO Petroleum Products, Inc. (Applicant), of Port of Albany, Albany, New York 12202, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Albany, New York. The facility as originally proposed was to consist of a combustion turbine generator, a heat recovery steam generator equipped for supplementary firing and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in a petroleum refining process. The primary energy source will be petroleum distillate. Construction of the facility will commence March 1989.

The original application was filed on June 26, 1986 and granted on October 24, 1986 (37 FERC ¶ 62068). The recertification is requested due to changes in the facility's configuration and decrease in electric power production capacity from 8.926 MW to 3.8 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3664 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2493 Washington]

Puget Sound Power & Light Co.; Intent To File an Application for a New License

February 10, 1989.

Take notice that on December 27, 1988, Puget Sound Power & Light Company, the existing licensee for the Snoqualmie Falls Hydroelectric Project No. 2493, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99-495. The original license for Project No. 2493 was issued effective March 1, 1956, and expires December 31, 1993.

The project is located on the Snoqualmie River in King County, Washington. The principal works of the Snoqualmie Project include a concrete dam above Snoqualmie Falls; two penstocks to Plant No. 1, with an installed capacity of 11,600 kW, in a cavern with a tailrace tunnel; a concrete lined tunnel and two penstocks to Plant No. 2, with an installed capacity of 30,090 kW, further downstream; two transmission lines to the Snoqualmie Falls switching station; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, the licensee is required to make available certain information described in Docket No. RM87-7-000, Order No. 496 (Final Rule issued April 28, 1988). A copy of this Docket can be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information as described in the rule is now available from the licensee at One Bellevue Center, 411-108th Avenue Northeast, Bellevue, WA 98004, Attn: Michael V. Stimac, telephone (206) 462-3010.

Pursuant to section 15(c)(1) of the Act, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 89-3665 Filed 2-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF89-137-000]

Tropicana Products, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 10, 1989.

On January 31, 1989, Tropicana Products, Inc. (Applicant), of 1001 13th Avenue East, Bradenton, Florida 34208, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bradenton, Florida. The facility will consist of a combustion turbine generator and a heat recovery steam generator equipped with a duct burner. Thermal energy recovered from the facility will be used for citrus operations in the Applicant's plant. The electric power production capacity of the facility will be approximately 50 MW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin in the first quarter of 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and

214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3666 Filed 2-15-89; 8:45 am]

BILLING CODE 8717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3519-3]

Feasibility and Cost-Effectiveness of Controlling Emissions From Diesel Engine in Rail, Marine, Construction, Farm, and Other Mobile Off-Highway Equipment; Availability of a Draft Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of a draft study; request for review and comment.

SUMMARY: This notice announces the availability of a draft study performed for EPA by Radian Corporation, which examined the feasibility and cost effectiveness of reducing hydrocarbons (HC), carbon monoxide (CO), nitrous oxide (NOx), and particulate matter (PM) emissions from a variety of off-highway mobile diesel engine sources. The emission sources examined include rail, construction, farm, marine, and other mobile off-highway diesel equipment (e.g., diesel refrigeration units).

The report concludes that off-highway diesel engines contribute a significant amount of emissions to nationwide emission inventories, and that significant reductions in HC, NOx and PM could be attained from these sources at a relatively low cost by applying predominantly existing control technologies which have been developed for on-highway diesel engines to the very similar off-highway engines.

More specifically, the report finds that off-highway diesel vehicles emit 12.6 percent of nationwide NOx emissions, 2.4 percent of particulate matter, one percent of HC and 1.25 percent of CO. On-highway diesels, while burning 30 percent more fuel than off-highway

diesels, contribute about 10 percent of the NOx emissions inventory, 4.2 percent of PM, 1.1 percent of HC and one percent of CO emissions inventory. Potential emission reductions obtained from applying existing technologies to the off-highway diesel engines range from 38 to 88 percent depending on the source and pollutant type. Cost effectiveness estimates for HC plus NOx range from a few hundred to three thousand dollars per ton; estimates for PM range from one to nine thousand dollars per ton.

Although comments on all aspects of the report are requested and encouraged, EPA is specifically soliciting comments in four general areas. First, comments are requested on the emission factors and resulting emissions/inventories from current diesel engines. Second, comments are requested on the applicability of technologies to each type of diesel engine in meeting the suggested intermediate and advanced emission standards, and the emission reductions associated with these technologies. Third, comments are requested on the costs used for various emission control technologies in the cost effectiveness analyses. And last, although this issue was not addressed in the study EPA is requesting specific comments and data on the location (urban versus rural) of emissions from these off-highway diesel sources (the report lists only nationwide emission reductions). This information is important in assessing the air quality, health, and welfare benefits in urban and rural areas of potential EPA regulatory actions.

EPA does not have explicit legal authority to regulate emissions from off-highway sources. However, there has been congressional interest in granting EPA authority to regulate emissions from these sources. Therefore, EPA will be further assessing emissions from off-highway vehicles to determine whether there is a need to control such emissions, and comments received on this report will assist in this assessment.

DATES: Written comments on the study are requested on or before April 17, 1989.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: Central Station (LE-131A), U.S. Environmental Protection Agency, Attention: Docket No. A-88-23, 401 M Street SW., Washington, DC 20460.

Material pertaining to this study are contained in Public Docket A-88-23. This docket is located at the above addresses in the South Conference Center, Room 4, and may be inspected between 8 a.m. and 3 p.m. on weekdays.

As provided in 40 CFR Part 2, a reasonable fee may be charged by EPA for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Sprik, U.S. EPA (SDSD-12), Emission Control Technology Division, 2565 Plymouth Rd, Ann Arbor, MI 48105, Telephone: (313) 668-4276.

Copies of the study may be requested at this number.

Date: February 6, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 89-3621 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

[Region 6; FRL-3521-2]

Approvals of PSD Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-76M-7—BP Chemicals America, Inc.: PSD-TX-76M-7 modifies PSD-TX-76M-4 (TX-76M-5 and TX-76M-6 are incorporated into TX-76M-7) to authorize an increase in the production of acrylonitrile. The modified permit was issued on July 8, 1988.

2. PSD-TX-686M-1—Liquid Energy Corporation: PSD-TX-686M-1 modifies PSD-TX-686 to authorize:

(1) The revision of Special Provision 4 to delete the requirements to derate two Cooper GMVC-10 and two Clark HBA6T engines;

(2) The amendment of The Maximum Allowable Emission Rate Table to reflect emissions of 5 gm/hp-hr at full rated horsepower;

(3) The deletion of the phase "as modified by proposed new Source Performance Standards (NSPS), Subpart FF" from Provision 5. A; and

(4) The start up of an existing 3MM Btu/hr heater. The modified permit was issued on July 14, 1988.

3. PSD-TX-732—Cain Chemical, Inc.: This permit, issued on July 29, 1988, authorizes the construction of a cogeneration facility to be located at 1 CCPC Boulevard, Corpus Christi, Nueces County, Texas.

4. PSD-TX-730—Exxon Company, U.S.A.: This permit, issued on September 19, 1988, authorizes the installation of a prefractionator and associated equipment at the Catalytic Light Ends Unit No. 2 at the existing refinery located at 2800 Decker Drive, Baytown, Harris County, Texas.

5. PSD-TX-742—City Public Service: This permit, issued on September 30,

1988, authorizes the construction of a 525 MW coal-fired steam generating unit and associated coal, ash and limestone handling equipment at the existing Calaveras Lake Generating Plant located at 9599 Gardner Road, approximately five miles northeast of Elmhurst, Bexar County, Texas.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the Consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue Dallas, Texas 75202.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of April 17, 1989. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subjects of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

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

Date: February 1, 1989.

Robert E. Layton, Jr.,

Regional Administrator, Region 6.

[FR Doc. 89-3625 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50

[FRL-3521-3]

Superfund; Proposed Settlement; Middlesboro Rehabilitation Center

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Middlesboro Rehabilitation Center,

Middlesboro, Kentucky, with Ms. Mary Hale. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Clerk, Investigation and Cost Recovery Unit, Site Investigation and Support Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365. 404-347-5059.

Written comments may be submitted to the person above by March 20, 1989.

Date: February 3, 1989

Don Guinyard,

Acting Regional Administrator.

[FR Doc. 89-3626 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44525; FRL-3522-4]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on meta-cresol (CAS No. 108-39-4), 2,4-dichlorophenoxy acetic acid (2,4-D) (CAS No. 94-75-7), dibromomethane (CAS No. 74-95-3) and bis (2-chloroethoxy) methane (CAS No. 111-91-1), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for meta-cresol was submitted by the Chemical Manufacturers Association for a consortium of test sponsors pursuant to a test rule at 40 CFR 799.1250. It was received by EPA on February 1, 1989. The submission describes a

mutagenicity test on meta-cresol in the mouse bone marrow cytogenetic assay. This In Vivo mammalian bone marrow cytogenetic test is required by this test rule. Cresols are used as wire enamel solvents, automotive cleaners, and organic intermediates in manufacturing phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are: In the production of several herbicides and disinfectants; as cleaning compounds, degreasers and antioxidants; and in ore flotation.

Test data for 2,4-D was submitted by the Industry Task Force on 2,4-D pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on January 31, 1989. The submission describes the hydrolysis of 2,4-D in aqueous solutions buffered at pH 3, 7 and 11. Environmental fate testing is required by this test rule.

Test data for dibromomethane was submitted by AmeriBrom, Inc. pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on January 31, 1989. The submission describes hydrolysis as a function of pH at 25 degrees celsius. Environmental fate testing is required by this test rule.

Test data for bis (2-chloroethoxy) methane was submitted by Morton Thiokol, Inc. pursuant to a test rule at 40 CFR 799.5055. It was received by EPA on January 30, 1989. The submission describes the hydrolysis kinetics of bis (2-chloroethoxy) methane. Environmental fate testing is required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44525). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Room. NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 9, 1989.

Frank D. Kover,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-3627 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59267A; FRL-3522-5]

Approval of Test Marketing Exemption for Certain Chemicals**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-89-6. The test marketing conditions are described below.

EFFECTIVE DATE: February 3, 1989.**FOR FURTHER INFORMATION CONTACT:**

Heidi A. Siegelbaum, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460. (202) 382-3745.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-89-6. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-89-6:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person

under the control of the Company, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Contact with skin may be harmful. Chemicals similar in structure to this compound have been found to cause cancer, liver toxicity, mutagenicity, and male reproductive effects. To protect yourself, you must wear protective gloves, clothing, and goggles.

4. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the bill of lading that accompanies each shipment of the substance.

e. Copies of any determination under paragraph 2.a. above that the protective gloves used by the Company are impervious to the substance.

T-89-6

Date of Receipt: December 2, 1988.

Notice of Receipt: December 16, 1988 (53 FR 50569).

Applicant: Confidential.

Chemical: (G) Acrylic copolymer.

Use: (G) Resin in steel coatings.

Production Volume: 6,800 kg. (Import).

Number of Customers: Confidential.

Test Marketing Period: Six months, commencing on first day of manufacture.

Risk Assessment: EPA identified concerns for liver toxicity, mutagenicity, oncogenicity, and male reproductive effects based on data on an analogous chemical substance. However, during manufacturing, processing, and use, inhalation exposures to workers are not expected and dermal exposure to workers will be prevented by protective gloves, clothing, and goggles. EPA identified no significant environmental concerns for the test market substances. Therefore, the test market substance will not present an unreasonable risk of injury to human health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: February 3, 1989.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-3628 Filed 2-15-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3521-4]

Clean Water Act Class II; Proposed Administrative Penalty Assessment; Opportunity to Comment Regarding Lozier Corp., Joplin, MO

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Lozier Corporation, Joplin, Missouri.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act.

EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits,

40 CFR Part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of this public notice.

On February 1, 1989, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236-2811, the following Complaint: In the Matter of Lozier Corporation, 1625 Schifferdecker Avenue, Joplin, Missouri; EPA Docket No. VII 89-W-0005.

The Complaint proposes a penalty of \$125,000, for effluents discharged from the Lozier Corporation plant to the City of Joplin wastewater treatment facilities in excess of the Electroplating Point Source Categorical Pretreatment Standards at 40 CFR Part 413, the Metal Finishing Point Source Categorical Pretreatment Standards, 40 CFR Part 433, and Industrial Discharge Permit 86-10 issued to Lozier Corporation by Joplin, Missouri, and for failure to submit a Baseline Monitoring Report as required by 40 CFR Part 403.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by Lozier Corporation is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding for thirty days from the date of this notice.

Date: February 1, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-3629 Filed 2-15-89; 8:45 am]

BILLING CODE 6590-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 89-194]

Delegation of Authority To Appoint Conservator for Insolvent FSLIC Insured Institutions

Date: February 14, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board") is authorizing the performance of the Board's function of appointing the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for Federally-chartered and other insured institutions, not for the purpose of liquidation, by the Executive Director of the FSLIC, the Executive Director of the Office of Regulatory Activities and the General Counsel of the Bank Board, jointly, upon certain conditions and in accordance with specified procedures. The delegated authority may not be exercised in cases where it is determined that a significant issue of law or policy is involved. The Board is also permitting further, limited subdelegations of its authority to appoint the FSLIC as conservator.

EFFECTIVE DATE: February 14, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, (202) 377-6428; or Vicki L. Hawkins, Attorney, Office of General Counsel, (202) 377-7034, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board has adopted the following resolution:

Resolved, That, pursuant to section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a) (1981), the Federal Home Loan Bank Board ("Board") hereby authorizes the performance of the Board's function of appointing the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator of federally chartered and other insured institutions, not for the purpose of liquidation, in certain conditions, as follows:

1. The Executive Director of the FSLIC, the Executive Director of the Office of Regulatory Activities, and the General Counsel ("Executive Directors") may jointly exercise the authority of the Board to appoint the FSLIC as conservator of a Federal association, not for the purpose of liquidation, pursuant to section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended ("HOLA"), 12 U.S.C. 1464(d)(6)(A), or as conservator of an insured institution

other than a Federal association, not for the purpose of liquidation, pursuant to section 406(c)(1)(B) of the National Housing Act, as amended ("NHA"), provided, however, that such authority shall not be exercised if any Executive Director determines that a significant issue of law or policy is involved in the appointment, the determination of a ground for the appointment, or the issuance of an order or resolution concerning the terms of the appointment. The authority granted by this Resolution includes the authority to appoint a conservator, not for the purpose of liquidation, to determine or opine that a ground for such appointment exists, and to issue orders and resolutions, each in the form of an order or resolution previously issued by the Board in appointing a conservator, or in substantially similar form, that effect and implement such appointment, including, but not limited to, orders and resolutions providing for notifying State officials, the exercise of powers by a conservator, and the indemnification of persons acting on behalf of the FSLIC as conservator;

2. Each Executive Director may further designate no more than two subordinate officers, each of whom may exercise the authority conferred upon such Executive Director by this Resolution. An Executive Director shall file with the Secretary or an Assistant Secretary to the Board the name of any subordinate designated pursuant to the previous sentence and the revocation of any such designation by such Executive Director; and such designation or revocation shall be effective only upon such filing;

3. An Executive Director who determines that a significant issue of law or policy would be involved in the appointment of the FSLIC as conservator for a Federal association or an insured institution shall file with the Secretary or an Assistant Secretary a statement setting forth such determination;

4. Any Board Resolution issued pursuant to this Resolution shall state in such Resolution, but above its first paragraph, "Issued Under Delegated Authority;" and a Resolution appointing the FSLIC as conservator or a group of Resolutions issued on the same date to appoint the FSLIC as conservator and implement such appointment shall be preceded by a statement signed by or on behalf of the Executive Directors that the Resolution is or the Resolutions are issued under the authority of this Resolution;

5. Each member of the Board, or an Assistant designated by a Board

member to act on his or her behalf, shall be informed of any proposed exercise of joint authority under this Resolution to appoint a conservator for a Federal association or an insured institution prior to the exercise of such authority; and

6. The Board reserves the power to appoint a conservator for a Federal association or an insured institution in any instance in which the Board determines to exercise such power directly and not through this Resolution; and

Resolved further, That this resolution shall be effective immediately upon its adoption by the Board; and

Resolved further, That the Secretary to the Board shall immediately forward this resolution for publication in the Federal Register.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
Assistant Secretary.

[FR Doc. 89-3855 Filed 2-15-89; 9:16 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):
Pride Cruise Lines, Limited/Carter-Green-Redd Inc., State Port, East Pier Dock 52, Gulfport, Mississippi 39502
Vessel: Pride of Mississippi.

Date: February 13, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-3590 Filed 2-15-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citicorp, New York, New York; Application To Engage in Leasing Activities

Citicorp, New York, New York ("Citicorp"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR

225.23(a)(3)), for permission to engage *de novo*, through any of its existing subsidiaries or any subsidiaries yet to be formed (collectively "subsidiaries"), in certain leasing activities involving the leasing of personal property, or acting as agent, broker, or adviser in leasing such property, pursuant to the Board's Regulation Y (12 CFR 225.25(b)(5)). These activities will be conducted nationwide. Citicorp currently engages in leasing activities through certain existing subsidiaries for which it has received prior Board approval under Regulation Y (12 CFR 225.25(b)(5)).

Citicorp also proposes to expand its leasing activities to include leasing transactions that comply with all of the conditions of Regulation Y except as set out below. Citicorp is requesting the Board's prior approval to engage in leasing transactions the terms of which will allow subsidiaries to rely for their compensation on the estimated residual value of the property at the expiration of the initial term of the lease up to 100 percent of the acquisition cost of the property. Citicorp has stated that it will limit such leases with estimated residual values in excess of 20 percent of acquisition cost to no more than 10 percent of Citicorp's total consolidated assets. Citicorp will also limit leases with estimated residual values in excess of 70 percent of acquisition cost to no more than two percent of Citicorp's total consolidated assets. Regulation Y currently limits residual value reliance to no more than 20 percent of the acquisition cost of the property to the lessor. 12 CFR 225.25(b)(5)(iv)(C).

Citicorp has committed that all of its leasing transactions will have an initial minimum term of one year, and provide substantial penalties for early termination. Citicorp has also committed to conform its leasing activities to any future Board rulemaking regarding leasing.

Section 4(c)(8) of the BHC Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n*

v. Board of Governors, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board statement Regarding Regulation Y, 49 FR 806 (1984).

Citicorp believes that its proposed leasing activities, including the less restrictive residual value requirement, are closely related to banking, and cites as authority for this the recently expanded authority for national banks to engage in leasing transactions on a net lease basis. 12 U.S.C. 24 (Tenth). The Office of the Comptroller of the Currency has interpreted that provision as authorizing national bank leases that rely on a residual value of up to 70 percent of the original cost of the property to the lessor. Federally chartered thrift institutions have similar authority. 12 U.S.C. 1464(c)(2)(A) and 12 CFR 545.78.

In determining whether an activity meets the second, or proper incident to banking test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Citicorp contends that subsidiaries' conduct of the proposed activities will result in significant public benefits that will outweigh any possible adverse effects. First Security states that such public benefits will take the form of increased competition in the leasing industry, gains in efficiency, increased earnings for subsidiaries, and improved services to leasing customers.

Comments regarding the application must be received at the offices of the Board of Governors not later than March 10, 1989.

Board of Governors of the Federal Reserve System, February 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3598 Filed 2-15-89; 8:45 am]

BILLING CODE 6210-01-M

Phenix-Girard Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 9, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Phenix-Girard Bancshares, Inc.*, Phenix City, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of Phenix-Girard Bank, Phenix City, Alabama.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Bancorp, Inc.*, Ketchikan, Alaska; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank, Ketchikan, Alaska.

Board of Governors of the Federal Reserve System, February 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3599 Filed 2-15-89; 8:45 am]

BILLING CODE 6210-01-M

United Saver's Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking

activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *United Saver's Bancorp, Inc.*, Manchester, New Hampshire; to continue to service loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 10, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-3600 Filed 2-15-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Annual Update of the Poverty Income Guidelines

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides an update of the poverty income guidelines to account for last year's increase in prices as measured by the Consumer Price Index.

DATE: Effective February 16, 1989.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty income guidelines in general, contact Joan Turek-Brezina or Gordon Fisher (telephone: (202) 245-6141).

Questions about applying these guidelines to a particular Federal program should be referred to the Federal office which is responsible for that program.

For information about the Hill-Burton Uncompensated Services Program (no-fee or reduced-fee hospital care at certain hospitals for certain persons unable to pay for such care), contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443-6512). (As set by 42 CFR 124.505(b), the effective date of these guidelines for facilities obligated under the Hill-Burton Uncompensated Services Program is 60 days from the date of this publication.)

For information about the number of persons in poverty or about the Census Bureau (statistical) poverty thresholds, contact Enrique Lamas, Chief, Poverty and Wealth Statistics Branch, U.S. Bureau of the Census (telephone: (301) 763-8578).

This notice provides the 1989 update of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). As required by that law, this update reflects last year's change in the Consumer Price Index (CPI-U); it was done using the same procedure used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the Federal government's statistical poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for *administrative purposes*—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty*

thresholds are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty income guidelines as only one of several eligibility criteria, or uses a percentage multiple of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of giving priority to lower-income persons or families in the provision of assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below should be used for both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 160 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) *Family*. A family is a group of two or more persons related by birth, marriage, or adoption who live together; all such related persons are considered as members of one family. For instance, if an older married couple, their daughter and her husband and two children, and the older couple's nephew all lived in the same house, they would all be considered members of a single family. If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not to the household as a whole.

(b) *Family unit of size one*. In connection with the poverty income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—that is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the only person living in a housing unit, or may be living in a housing unit (or in group quarters such as a rooming house) in which one or more persons also live who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income*. This means total annual cash receipts before taxes from all sources, with the exceptions noted below. Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months. Income includes money wages and salaries before any deductions; net receipts from nonfarm self-employment (receipts from a person's own unincorporated business, professional enterprise, or partnership, after deductions for business expenses); net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses); regular payments from social security, railroad retirement, unemployment compensation, strike benefits from union funds, workers' compensation, veterans' payments, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, Emergency Assistance money payments, and non-Federally-funded General Assistance or General Relief money payments), and training stipends; alimony, child support, and military family allotments or other regular support from an absent family member or someone not living in the household; private pensions, government employee pensions (including military retirement pay), and regular insurance or annuity payments; college or university scholarships, grants, fellowships, and assistantships; and dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts, and net gambling or lottery winnings.

As defined here, income does not include the following types of money received: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, loans, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare,

Medicaid, food stamps, school lunches, and housing assistance.

1989 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1.....	\$5,980
2.....	8,020
3.....	10,060
4.....	12,100
5.....	14,140
6.....	16,180
7.....	18,220
8.....	20,260

For family units with more than 8 members, add \$2,040 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1.....	\$7,480
2.....	10,030
3.....	12,580
4.....	15,130
5.....	17,680
6.....	20,230
7.....	22,780
8.....	25,330

For family units with more than 8 members, add \$2,550 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1.....	\$6,870
2.....	9,220
3.....	11,570
4.....	13,920
5.....	16,270
6.....	18,620
7.....	20,970
8.....	23,320

For family units with more than 8 members, add \$2,350 for each additional member.

Dated: February 9, 1989.

Don M. Newman,
Acting Secretary of Health and Human Services.

[FR Doc. 89-3653 Filed 2-15-89; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement No. 908]

Cooperative Agreements for Minority and Other Community-Based Human Immunodeficiency Virus (HIV) Prevention Projects Program Announcement; Availability of Funds for Fiscal Year 1989; Correction

A notice announcing 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) was published in the *Federal Register* on Monday, January 9, 1989 (54 FR 663); [correction on Tuesday, January 24, 1989 (54 FR 3557)]. The notice document (89-395 beginning on page 663 in the issue of Monday, January 9, 1989) is corrected as follows:

1. On page 663, in the second column, first paragraph, following the first sentence, insert the following: "For purposes of this announcement, a nongovernmental organization is a private nonprofit organization, a quasi-public organization, a public or private institution of higher education, a public or private hospital, an Indian tribe, or an Indian tribe organization which is not a federally-recognized Indian tribal government."

2. On page 663, in the second column, first paragraph, in the first line under the section "Eligible Applicants," insert "nongovernmental" before "nonprofit."

All other information and requirements in the January 9, 1989, notice and January 24, 1989, correction remain the same.

Dated: February 10, 1989.

Robert L. Foster,

*Acting Director, Office of Program Support
Centers for Disease Control.*

[FR Doc. 89-3585 Filed 2-15-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89N-0046]

Drug Export; Cyclopentolate Ophthalmic Solution, 1%

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Steris Laboratories, Inc., has filed an application requesting approval for the export of the human drug Cyclopentolate Ophthalmic Solution, 1% to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT:

Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the *Federal Register* within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Steris Laboratories Inc. 620 North 51st Ave., Phoenix, AZ 85043-4705, has filed an application requesting approval for the export of the drug Cyclopentolate Ophthalmic Solution, 1%, to Canada. This product is used in the treatment of mydriasis and cycloplegia for diagnostic procedures. The application was received and filed in the Center for Drug Evaluation and Research on January 12, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the

application to do so by February 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 3, 1989.

Daniel L. Michels,

*Director, Office of Compliance, Center for
Drug Evaluation and Research.*

[FR Doc. 89-3593 Filed 2-15-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0047]

Drug Export; Tropicamide Ophthalmic Solution, 1%

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Steris Laboratories, Inc., has filed an application requesting approval for the export of the human drug Tropicamide Ophthalmic Solution, 1% to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT:

Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 382)) Provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether

the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043-4705, has filed an application requesting approval for the export of the drug Tropicamide Ophthalmic Solution, 1%, to Canada. This product is used in the treatment of mydriasis and cycloplegia for diagnostic procedures. The application was received and filed in the Center for Drug Evaluation and Research on January 12, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 27, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: February 3, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-3594 Filed 2-15-89; 8:45am]

BILLING CODE 4190-01-M

[Docket No. 84N-0102]

Cumulative List of Orphan-Drug and Biological Designations

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: By this notice, the Food and Drug Administration (FDA) is announcing the availability of a cumulative list of designated orphan drugs and biologicals as of December 31, 1988. FDA has previously announced the availability of lists, which are brought up-to-date quarterly, identifying the drugs and biologicals granted orphan-drug designation. These lists are required by section 526 of the Federal Food, Drug, and Cosmetic Act.

ADDRESS: Copies of the list of current orphan-drug designations are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Any future lists will also be available from FDA's Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Aleta M. Sindelar, Office of Orphan Products Development (HF-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan-drug designation under section 526 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a list of designated orphan drugs and biological products. This list is made current on a quarterly basis and is available on request from FDA's Dockets Management Branch (address above). Those requesting copies of any lists should specify Docket No. 84N-0102, which is the docket number for this notice. At the end of each calendar year, the agency publishes in the **Federal**

Register an up-to-date cumulative list of designated orphan drugs and biological products including the names of designated compounds, the specific disease/condition for which the compounds are designated, and the sponsors' names and addresses. The cumulative list of compounds receiving orphan-drug designation through 1987 was published in the **Federal Register** of January 29, 1988 (53 FR 2680).

The list that is being made available through this notice consists of designated orphan drugs and biological products through December 31, 1988, and, therefore, brings the January 29, 1988, publication up to date.

The orphan-drug designation of a drug or biological product applies only to the sponsor that requested the designation. Each sponsor interested in developing an orphan drug or orphan biological product must apply for orphan-drug designation to obtain exclusive marketing rights. Any request for designation is required to be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested. (See 53 FR 47577; November 23, 1988.) Copies of the interim guidelines for use in preparing an application for orphan-drug designation may be obtained from the contact person in the Office of Orphan Products Development identified above.

The names used in the list to identify drug and biological products that have not been approved/licensed for marketing may not be the established/proper names approved by FDA for these products if they are eventually approved/licensed for marketing. Because these products are investigational, some may not yet have been reviewed for purposes of assigning the most appropriate established proper name.

Dated: February 9, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Orphan Designations Pursuant to Section 526 of the Federal Food, Drug, and Cosmetic Act as Amended by the Orphan Drug Act (Pub. L. 97-414) Through 1988

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988

Biological designations		
Name of biological	Designated use	Sponsor's name and address
Generic—alpha-1-anti-trypsin (recombinant DNA origin). Trade—Not established.	Supplementation therapy for alpha-1 antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, 3145 Porter Drive, Palo Alto, CA 94304.
Generic—alpha-1-proteinase inhibitor (Alpha-1 PI). Trade—Prolastin ^{1,2} .	Replacement therapy in the Alpha 1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—anti-J5mAb. Trade—Not established.	Treatment of patients with gram-negative bacteremia which has progressed to endotoxin shock.	Centocor, Inc., 244 Great Valley, Malvern, PA 19355.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of biological	Biological designations	Sponsor's name and address
Generic—antimelanoma antibody XMMME-011-RTA. Trade—Same as generic.	Treatment of Stage III melanoma not amenable to surgical resection.	XOMA Corporation, 3516 Sacramento Str., San Francisco, CA 94118.
Generic—anti-TAP-72 immunotoxin. Trade—XOMAZYME-791.	Treatment of metastatic colorectal adenocarcinoma.....	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—antithrombin III (AT-III). Trade—Not established.	Replacement therapy in congenital deficiency of AT-III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—antithrombin III concentrate I.V. Trade—Kyberlin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT-III deficiency.	Hoechst-Roussel, Route 202-206 North, Somerville, NJ 08876.
Generic—antithrombin III (human). Trade—Antithrombin.	Hereditary AT-III deficiency.....	Kabi Vitrum, Inc., 1311 Harbor Bay Pkwy, Alameda, CA 94501.
Generic—antithrombin III (human). Trade—Antithrombin III (human).	Preventing or arresting episodes of thrombosis in patients with congenital antithrombin III deficiency and/or to prevent the occurrence of thrombosis in patients with antithrombin III deficiency who have undergone trauma or who are about to undergo surgery or parturition.	American National Red Cross, National HQD, 17th and E Street NW., Washington, DC 20006.
Generic—benzylpenicillin, benzylpenicilloic acid, and benzipenilloic acid. Trade—Pre-Pen/MDM.	Assessing the risk of administering penicillin when its the preferred drug of choice in drug of choice in adult patients who have previously received penicillin and have a history of clinical hypersensitivity.	Kremers-Urban Co., P.O. Box 2038, Milwaukee, WI 53201.
Generic—botulinum A toxin. Trade—Oculinum.....	Treatment of strabismus. Treatment of blepharospasm.	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—botulinum toxin. Trade—Ortholinum.....	Treatment of spasmodic torticollis.....	Alan B. Scott, M.D., 2232 Webster Street, San Francisco, CA 94115.
Generic—CD5-T Lymphocyte Immunotoxin. Trade—XOMAZYME-H65.	For ex-vivo treatment to eliminate mature T cells from potential bone marrow grafts. For in-vivo treatment of bone marrow recipients to prevent graft rejection and graft vs host disease (GVHD). Treatment of graft vs host disease (GVHD) and/or rejection in patients who have received bone marrow transplants.	XOMA Corporation, 2910 Seventh Street, Berkeley, CA 94710.
Generic—cytomegalovirus Immune Globulin (Human). Trade—Not established.	Prevention or attenuation of primary cytomegalovirus disease in immunosuppressed recipients of organ transplants.	Massachusetts Public Health Biologic Labs, 305 South Street, Jamaica Plain, MA 02130.
Generic—digoxin Immune Fab (Ovine). Trade—digidote.	Life-threatening acute cardiac glycoside intoxication manifested conduction disorders, ectopic ventricular activity and (in some cases) hyperkalemia.	Boehringer Mannheim, 1301 Piccard Drive, Rockville, MD 20850.
Generic—digoxin Immune Fab (Ovine). Trade—Digibind ^{1 2} .	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome, 3030 Cornwallis Road, Research Triangle Park, NC 27709.
Generic—erwinia 1-asparaginase. Trade—Not established.	Treatment of acute lymphocytic leukemia (ALL).....	Porton Products Ltd., 5445 Balboa Blvd., Suite 115, Encino, CA 91316.
Generic—erwinia 1-asparaginase. Trade—Not established.	Treatment of acute lymphocytic leukemia (ALL).....	Lypho Med, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
Generic—erythropoietin (recombinant-human). Trade—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	Amgen, 1900 Oak Terrace La., Thousand Oaks, CA 91320.
Generic—erythropoietin (recombinant-human). Trade—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	McDonnell Douglas, P.O. Box 516, St. Louis, MO 63166.
Generic—erythropoietin (recombinant-human). Trade—Not established.	Treatment of anemia associated with end stage renal disease (ESRD). Treatment of anemia of prematurity in preterm infants.	Ortho Pharmaceutical Corporation, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
Generic—erythropoietin (recombinant-human). Trade—EPOCH.	Treatment of anemia associated with end stage renal disease (ESRD).	Chugai Pharmaceuticals, 1-9, Kyobashi 2-Chome, Chu, Tokyo 104, Japan.
Generic—erythropoietin (recombinant-human). Trade—Not established.	Treatment of anemia associated with end stage renal disease (ESRD).	Organon Teknika, 800 Capitoia Drive, Durham, NC 27713.
Generic—factor VIIa (recombinant, DNA origin). Trade—Not established.	Treatment of patients with hemophilia A & B with and without anti-bodies against Factor VIII/IX. Treatment of patients with von Willebrand's disease.	Novo Laboratories, 33 Turner Road, Danbury, CT 96810-5101.
Generic—factor XIII. Trade—Fibrogammin.....	Congenital Factor XII deficiency.....	Hoechst-Roussel Pharmaceuticals, Route 202-206 North, Somerville, NJ 08876.
Generic—heme arginate. Trade—Normosang.....	Treatment of symptomatic stage of acute porphyria.....	Huhtamaki Oy Pharmaceuticals, Leiras Medic, P.O. Box 415, SF-20101 Turku, Finland.
Generic—hemin. Trade—Panhematin ^{1 2}	Amelioration of recurrent attacks of acute intermittent porphyria temporarily related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata and hereditary coproporphyria.	Abbott Laboratories, North Chicago, IL 60064.
Generic—Indium In 111 antimelanoma antibody XMMME-0001-DTPA. Trade—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastases.	XOMA Corporation, 3516 Sacramento Str., San Francisco, CA 94118.
Generic—interferon alfa-n1. Trade—Wellferon.....	Treatment of Acquired Immune Deficiency Syndrome (AIDS) -related Kaposi's Sarcoma. Treatment of Human Papillomavirus (HPV) in patients with severe resistant/recurrent respiratory (laryngeal) papillomatosis.	Burroughs Wellcome, 3030 Cornwallis Road, Research Triangle Park, NC 27709.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of biological	Biological designations	Sponsor's name and address
<i>Generic</i> —interferon alfa-2a (recombinant). <i>Trade</i> —Roferon-A ^{1, 2} .	Treatment of selected patients with Acquired Immune Deficiency Syndrome (AIDS)-related Kaposi's Sarcoma. ^{1, 2} Treatment of metastatic renal cell carcinoma.	Hoffman-LaRoche, 340 Kingsland Str., Nutley, NJ 07110.
<i>Generic</i> —interferon alfa-2b (recombinant). <i>Trade</i> —Intron A ^{1, 2} .	Treatment of chronic myelogenous leukemia (CML). Treatment of metastatic renal cell carcinoma. Treatment of selected patients with AIDS-related Kaposi's Sarcoma. ^{1, 2} Treatment of ovarian carcinoma. Treatment of invasive carcinoma of the cervix. Treatment of primary malignant brain tumors. Treatment of carcinoma in situ of the urinary bladder. Treatment of human papillomavirus (HPV) in patients with recurrent respiratory (laryngeal) papillomatosis. Treatment of acute hepatitis B.	Schering Corporation, 2000 Galloping Hill Road, Kenilworth, NJ 07033.
<i>Generic</i> —interferon (recombinant human, beta). <i>Trade</i> —Betaseron.	Treatment of Acquired Immune Deficiency Syndrome (AIDS). Treatment of Multiple Sclerosis (MS).	Triton Biosciences, 1501 Harbor Bay Pkwy, Alameda, CA 94501.
<i>Generic</i> —interferon gamma-1b. <i>Trade</i> —Not established.	Treatment of Chronic Granulomatous Disease (CGD) ...	Genentech, Inc., 460 Point San Bruno Boulevard, South San Francisco, CA 94080.
<i>Generic</i> —interleukin-2, recombinant. <i>Trade</i> —Proleukin.	Treatment of metastatic renal cell carcinoma	Cetus Corporation, 1400 Fifty-Third Street, Emeryville, CA 94608.
<i>Generic</i> —iodine I 123 murine monoclonal antibody to human alpha-fetoprotein. <i>Trade</i> —Not established.	Detection of hepatocellular carcinoma and hepatoblastoma. Detection of alpha-fetoprotein producing germ cell tumors.	Immunomedics, Inc., 5 Bruce Street, Building #7, Newark, NJ 07013.
<i>Generic</i> —iodine I 123 murine monoclonal antibody to human chorionic gonadotropin (hCG). <i>Trade</i> —Not established.	Detection of hCG producing tumors such as germ cell and trophoblastic cell tumors.	Immunomedics, Inc., 150 Mt. Bethel Rd., CN4918, Warren, NJ 07060.
<i>Generic</i> —iodine I 131 Lym-1 monoclonal antibody. <i>Trade</i> —Not established.	Treatment of B-cell lymphoma	Lederle Laboratories, Pearl River, NY 10965.
<i>Generic</i> —iodine I 131 murine monoclonal antibody to human alpha-fetoprotein. <i>Trade</i> —Not established.	Treatment of hepatocellular carcinoma and hepatoblastoma. Treatment of alpha-fetoprotein producing germ cell tumors.	Immunomedics, Inc., 5 Bruce Street, Building #7, Newark, NJ 07013.
<i>Generic</i> —iodine I 131 murine monoclonal antibody to human chorionic gonadotropin (hCG). <i>Trade</i> —Not established.	Treatment of hCG producing tumors such as germ cell and trophoblastic cell tumors.	Immunomedics, Inc., 150 Mt. Bethel Rd., CN4918, Warren, NJ 07060.
<i>Generic</i> —monoclonal antibodies (murine or human) recognizing B-cell lymphoma idiotypes. <i>Trade</i> —Not established.	Treatment of B-cell lymphoma	IDEC, Inc., 291 North Bernardo Ave., Mountain View, CA 94043.
<i>Generic</i> —monoclonal antibody 17-1A. <i>Trade</i> —Panorex.	Treatment of pancreatic cancer	Centocor, Inc., 244 Great Valley Pkwy, Malvern, PA 19355.
<i>Generic</i> —monoclonal antiendotoxin antibody XMMENO5.	Treatment of patients with gram-negative sepsis which has progressed to shock.	Pfizer Inc., 235 East 42nd Street, New York, NY 10017.
<i>Generic</i> —pentastarch. <i>Trade</i> —Pentaspan ^{1, 2}	For use as an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	DuPont Critical Care, 1600 Waukegan Road, McGaw Park, IL 60085.
<i>Generic</i> —polyribonucleotide. <i>Trade</i> —Ampligen	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	HEM/Du Pont Immunological Products, Barley Mill Plaza, P27-2320, Wilmington, DE 19898.
<i>Generic</i> —ricin (Blocked) conjugated murine monoclonal antibody (Anti-B4) to B Cell (DC 19). <i>Trade</i> —Not established.	Treatment of B-cell leukemia and B-cell lymphoma	Immunogen, Inc., 148 Sidney Street, Cambridge, MA 02139.
<i>Generic</i> —serrata marcescens extract (polyribosomes). <i>Trade</i> —ImuVert.	Treatment of primary brain malignancies	Cell Technology, Inc., 1668 Valtec Lane, Boulder, CO 80301.
<i>Generic</i> —ST1-RTA Immunotoxin, (SR 44163). <i>Trade</i> —Not established.	Prevention of acute graft versus host disease (GVHD) in allogeneic bone marrow transplantation. Treatment of patients with B-chronic lymphocytic leukemia (CLL).	Sanofi, Inc., 101 Park Ave., New York, NY 10178.
<i>Generic</i> —Technetium Tc 99m Anti-melanoma Murine Monoclonal Antibody Kit.	For use in detecting, by imaging, metastases of malignant melanoma.	NeoRx Corporation, 410 West Harrison, Seattle, WA 98119.
<i>Generic</i> —trisaccharides A&B. <i>Trade</i> —Not established.	Treatment of moderate to severe clinical forms of hemolytic disease of the newborn arising from placental transfer of antibodies against blood group substances A and B. For use in ABO-incompatible solid organ transplantation including kidney, heart, liver, and pancreas. Treatment of moderate to very severe clinical forms of transfusion reactions arising from ABO incompatible transfusion of blood, blood products and blood derivatives. For use in ABO-incompatible bone marrow transplantation (BMT).	CHEMBIOMED, Ltd., 16th Floor Campus Towers, 11145-87th Avenue, Edmonton, Alberta, Canada T6G 0Y1.

¹ Approved for marketing.² Exclusive approval.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988

Name of drug	Drug designations	Sponsor name and address
Generic—acetylcysteine. Trade—Mucomyst/Mucomyst 10 IV.	Intravenous treatment of patients presenting with moderate to severe acetaminophen overdose.	Bristol-Myers U.S. Pharmaceutical, 2404 Pennsylvania Street, Evansville, IN 47721-0001.
Generic—aconiazide. Trade—Not established	Treatment of tuberculosis	Lincoln Diagnostics, P.O. Box 1139, Decatur, IL 62525.
Generic—allopurinol. Trade—Zyloprim	Ex-vivo preservation of cadaveric kidneys for transplantation.	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—allopurinol riboside. Trade—Not established	Treatment of cutaneous visceral leishmaniasis. Treatment of Chagas' disease.	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—amsacrine. Trade—Amsidyl	Treatment of patients with acute adult leukemia	Warner-Lambert Co., 201 Tabor Road, Morris Plains, NJ 07950.
Generic—anagrelide. Trade—Not established	Treatment of polycythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—anagrelide. Trade—Not established	Treatment of thrombocytosis in chronic myelogenous leukemia (CML). Treatment of essential thrombocythemia (ET).	Bristol-Myers Pharmaceutical Research and Development Division, 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492.
Generic—antipyrine. Trade—Not established	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, 14905 23rd Ave. North, Minneapolis, MN 55441.
Generic—AS-101. Trade—Not established	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Scientific Testing, 783 Jersey Avenue, New Brunswick, NJ 08901.
Generic—bacitracin, USP. Trade—Altracin	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A&B elaborated by Clostridium difficile.	A.L. Laboratories, 452 Hudson Terrace, P.O. Box 1621, Englewood Cliffs, NJ 07632.
Generic—baclofen (intrathecal). Trade—Lioresal	Treatment of intractable spasticity caused by spinal cord injury or multiple sclerosis (MS).	Medtronic, Inc., 7000 Central Ave., Minneapolis, MN 55432.
Generic—benzoate/phenylacetate. Trade—Ucephan/**	For adjunctive therapy in the prevention and treatment of hyperammonemia in patients with urea cycle enzymopathy (UCE) due to carbamylphosphate synthetase, ornithine, transcarbamylase, or arginosuccinate synthetase deficiency.	Kendall McGaw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
Generic—bethanidine sulfate. Trade—Not established	Treatment of primary ventricular fibrillation	Medco Research, Inc., 8733 Beverly Blvd., Suite 404, Los Angeles, CA 90048.
Generic—BW B759U. Trade—Not established	Treatment of severe human cytomegalovirus infections (HCMV) in specific immunosuppressed patient populations (e.g., bone marrow transplant recipients and Acquired Immunodeficiency Syndrome patients).	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—BW 12C. Trade—Not established	Treatment of sickle cell disease crisis	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—caffeine. Trade—Note established	Treatment of apnea of prematurity	Pediatric Pharmaceuticals, Inc., 379 Thornall St., Edison, NJ 08837.
Generic—calcitonin-human. Trade—Cibacalcin/**	Treatment of symptomatic Paget's disease of bone (osteitis deformans).	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
Generic—calcium acetate. Trade—Phos-Lo	Treatment of hyperphosphatemia in end stage renal disease (ESRD).	Braintree Laboratories, 60 Columbian St., P.O. Box 361, Braintree, MA 02184.
Generic—ceramide trihexosidase/alpha-galactosidase A. Trade—Not established	Treatment of Fabry's disease	Genzyme Corporation, 75 Kneeland St., Boston, MA 02111.
Generic—chenodiol. Trade—Chenix/**	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Reid-Rowell, Inc., 210 Main Street West, Baudette, MN 56623-0370.
Generic—chlorhexidine gluconate mouthrinse. Trade—Peridex	For use in the amelioration of oral mucositis associated with cytoreductive therapy used in conditioning patients for bone marrow transplantation therapy.	Procter & Gamble Co., Sharon Woods Technical Ctr. HB Building, 11511 Reed Hartman Hwy., Cincinnati, OH 45241.
Generic—cetiedil citrate. Trade—Not established	Treatment of sickle cell disease crisis	Medical Market Specialties, Inc., P.O. Box 150, Boonton, NJ 07005.
Generic—clindamycin. Trade—Cleocin	Treatment of Pneumocystis carinii pneumonia (PCP) associated with the Acquired Immunodeficiency Syndrome (AIDS). Treatment of PCP associated with AIDS.	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001.
Generic—clofazimine. Trade—Lamprene/**	Treatment of lepromatous leprosy, including dapsone-resistant lepromatous leprosy and lepromatous leprosy complicated by erythema nodosum leprosum.	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
Generic—colchicine. Trade—Not established	For use in arresting the progression of neurologic disability caused by chronic progressive multiple sclerosis (MS).	Pharmacontrol Corporation, P.O. Box 931, Englewood Cliffs, NJ 07632.
Generic—copolymer 1 (COP 1). Trade—Normosang	Treatment of multiple sclerosis (MS)	TAG Pharmaceuticals, C/O Lemmon Co., Sellersville, PA 18960.
Generic—cromolyn sodium. Trade—Gastrocrom	Mastocytosis	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
Generic—cyclosporine ophthalmic. Trade—Optimmune	Treatment of severe keratoconjunctivitis sicca	University of GA Research Foundation, College of Veterinary Medicine, University of GA, Athens, GA 30602.
Generic—cyproterone acetate. Trade—Cyproteron/Androcur	Treatment of severe hirsutism	Berlex Laboratories, 110 East Hanover Avenue, Cedar Knolls, NJ 07927.
Generic—cysteamine (2-aminoethanethiol). Trade—Not established	Treatment of nephropathic cystinosis	Jess G. Thoenes, M.D., Section of Biochemical Genetics and Metabolism, Dept. of Pediatrics, University of Michigan School of Medicine, Ann Arbor, MI 48109.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of drug	Drug designations Designated use	Sponsor name and address
<i>Generic</i> —dantrolene sodium. <i>Trade</i> —Dantrium.....	Treatment of neuroleptic malignant syndrome	Norwich Eaton Pharmaceuticals, P.O. Box 191, Norwich, NY 13815.
<i>Generic</i> —defibrotide. <i>Trade</i> —Not established	Treatment of thrombotic thrombocytopenic purpura.....	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
<i>Generic</i> —dextran sulfate sodium (UA001). <i>Trade</i> —Not established.	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Ueno Fine chemicals Industry, Ltd., 2-31 Koraibashi, Higashi-Ku, Osaka 541, Japan.
<i>Generic</i> —diaziquone. <i>Trade</i> —Not established	Treatment of primary brain malignancies (Grade III-IV astrocytomas).	Warner-Lambert, 201 Tabor Rd., Morris Plains, NJ 07950.
<i>Generic</i> —diethyldithiocarbamate. <i>Trade</i> —Imuthiol	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Merieux Institute, Inc., 7855 N.W. 12th St., Suite 114, Miami, Florida 33126.
<i>Generic</i> —dimethyl sulfoxide (DMSO). <i>Trade</i> —Sclerosol.	Treatment of cutaneous manifestations of scleroderma.	Research Medical, Inc., a subsidiary of Research Industries Corporation, 1847 West 2300 South, Salt Lake City, UT 84119.
<i>Generic</i> —dipalmitoylphosphatidylcholine (DPPC)/phosphatidylglycerol (PG). <i>Trade</i> —ALEC (Artificial Lung Expanding Compound).	Prevention & treatment of neonatal respiratory distress syndrome (RDS).	Britannia Pharmaceuticals, Ltd., Forum House, Brighton Road, Redhill, Surrey RH1 6YS U.K.
<i>Generic</i> —disodium silibinin dihemisuccinate. <i>Trade</i> —Legalon.	Treatment of hepatic intoxication by <i>Amanita phalloides</i> (mushroom poisoning).	Pharmaquest Corporation, 201 Tamal Vista Blvd., Corte Madera, CA 94925; and Dr. Madaus GmbH and Co., Ostmerheimer St. 198, 5000 Köln 91, Federal Republic of Germany.
<i>Generic</i> —d, 1-sotalol HCl. <i>Trade</i> —Not established.....	Treatment of life threatening ventricular tachyarrhythmias. Prevention of life threatening ventricular tachyarrhythmias.	Bristol-Myers Co., Pharmaceutical Research and Development Division, 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492-7660.
<i>Generic</i> —eflornithine HCl (DFMO). <i>Trade</i> —Ornidyl.....	Trypanosoma brucei gambiense sleeping sickness. Treatment of <i>Pneumocystis carinii</i> pneumonia (PCP) in Acquired Immunodeficiency Syndrome (AIDS) patients.	Merrell Dow Research, P.O. Box 6300 2110 East Galbraith Road, Cincinnati, OH 45215-6300.
<i>Generic</i> —epidermal growth factor (human). <i>Trade</i> —Not established.	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery. Acceleration of corneal epithelial regeneration and the healing of stromal tissue in the condition of non-healing corneal defects.	Chiron Corporation, 4560 Horton Street, Emeryville, CA 94608.
<i>Generic</i> —epidermal growth factor (human). <i>Trade</i> —Not established.	Promotion of cutaneous wound healing in extreme burn treatment protocols.	Ethicon, Inc., Somerville, NJ 08876-0151.
<i>Generic</i> —epoprostenol prostacyclin, PGI ₂ , PGX. <i>Trade</i> —Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs-Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
<i>Generic</i> —epoprostenol. <i>Trade</i> —Cyclo-Prostin	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta St., Kalamazoo, MI 49001.
<i>Generic</i> —epoprostenol, prostacyclin, PGI ₂ , PGX. <i>Trade</i> —Flolan.	Treatment of primary pulmonary hypertension (PPH).....	Burroughs-Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
<i>Generic</i> —etidronate disodium. <i>Trade</i> —Didronel * * *	Treatment of hypercalcemia of a malignancy managed by dietary modification and/or oral hydration.	Norwich Eaton Pharmaceuticals, P.O. Box 191, Norwich, NY 13815.
<i>Generic</i> —ethanolamine oleate. <i>Trade</i> —Ethinol * * *	Treatment of patients with esophageal varices that have recently bled, to prevent rebleeding.	Glaxo, Inc., P.O. Box 13960, Five Moore Drive, Research Triangle Park, NC 27709.
<i>Generic</i> —ethinyl estradiol. <i>Trade</i> —Not established.....	Treatment of Turner's syndrome	Gynex, Inc., 570 Lake Cook Rd., Deerfield, IL 60015.
<i>Generic</i> —fibronectin (human plasma derived). <i>Trade</i> —Not established.	Treatment of non-healing corneal ulcers or epithelial defects which have been unresponsive to conventional therapy and the underlying cause has been eliminated.	The New York Blood Center, Inc., 310 East 67 St., N.Y., N.Y. 10021.
<i>Generic</i> —fibronectin (plasma derived). <i>Trade</i> —Not established.	Treatment of non-healing corneal ulcers or epithelial defects which have been unresponsive to conventional therapy and for which any infectious cause has been eliminated.	Chiron Ophthalmics, 15A Marconi, Irvine, CA 92718.
<i>Generic</i> —fludarabine monophosphate. <i>Trade</i> —Not established.	Treatment of chronic lymphocytic leukemia (CLL).....	Triton Biosciences, 1501 Harbor Bay Pkwy., Alameda, CA 94501.
<i>Generic</i> —flumecinol. <i>Trade</i> —Zixoryn.....	Hyperbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586, Westport, CT 06881.
<i>Generic</i> —flunarizine. <i>Trade</i> —Sibelium.....	Treatment of alternating hemiplegia.....	Janssen Pharmaceuticals, 40 Kingsbridge Rd., Piscataway, NJ 08854.
<i>Generic</i> —gallium nitrate. <i>Trade</i> —Not established	Treatment of hypercalcemia of malignancy	Lymphomed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
<i>Generic</i> —ganciclovir (DHPG). <i>Trade</i> —Not established.....	Treatment of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immunocompromised patients.	Syntex (USA), Inc., 3401 Hillview Ave., Palo Alto, CA 94304.
<i>Generic</i> —gangliosides as sodium salts. <i>Trade</i> —Cronassial.	Treatment of Retinitis Pigmentosa	Fidia Pharmaceutical 1775 K St. NW., Suite 800, Washington, DC 20006.
<i>Generic</i> —glucocerebrosidase/beta-glucosidase (placenta-derived). <i>Trade</i> —Not established.	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corporation, 75 Kneeland St., Boston, MA 02111.
<i>Generic</i> —guanethidine monosulfate. <i>Trade</i> —Ismelin I.V.	Treatment of moderate to severe reflex sympathetic dystrophy and causalgia.	Ciba-Geigy Corporation, 556 Morris Ave., Summit, NJ 07901.
<i>Generic</i> —hexamethylmelamine <i>Trade</i> —Hexastat.....	Treatment of advanced adenocarcinoma of the ovary.....	Ives Laboratories, 685 Third Ave., New York, NY 10017.
<i>Generic</i> —histrelin. <i>Trade</i> —Not established	Treatment of central precocious puberty.....	Ortho Pharmaceutical Corporation, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
<i>Generic</i> —HPA-23. <i>Trade</i> —Not established.....	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Rhône-Poulenc Pharmaceuticals, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
<i>Generic</i> —hydroxycobalamin/sodium thiosulfate. <i>Trade</i> —Not established.	Treatment of severe acute cyanide poisoning.....	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of drug	Drug designations	Sponsor name and address
<i>Generic</i> —idarubicin HCl. <i>Trade</i> —Not established.....	Treatment of acute myelogenous leukemia (AML), also referred to as acute nonlymphocytic leukemia (ANLL).	Adria Laboratories, 7001 Post Road, Dublin, Ohio, 43216-6529.
<i>Generic</i> —Iodine I 131 meta-iodobenzylguanidine. <i>Trade</i> —Not established.	Diagnostic adjunct in patients with pheochromocytoma.	William Beierwaltes, M.D., Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Str., Ann Arbor, MI 48109.
<i>Generic</i> —Iodine I 131 6B-iodomethyl-19-norcholesterol. <i>Trade</i> —Not established.	Adrenal cortical imaging.....	William Beierwaltes, M.D., Nuclear Medicine, University of Michigan Medical Center, 1405 E. Ann Str., Ann Arbor, MI 48109.
<i>Generic</i> —ifosfamide. <i>Trade</i> —Ifex */**	Treatment of soft tissue sarcoma.....	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY, 13221-4755.
	Treatment of bone sarcoma..... To be used in combination with other approved antineoplastic agents, for third line chemotherapy of germ cell testicular cancer. It should be used in combination with a prophylactic agent for hemorrhagic cystitis, such as mesna.*/**.	Bristol-Myers Co., Pharmaceutical Research and Development Division, Wallingford, CT 06492.
<i>Generic</i> —inosine pranobex. <i>Trade</i> —Isoprinosine.....	Treatment of subacute sclerosing panencephalitis.....	Newport Pharmaceuticals, Inc., 897 W. Sixteenth Str., Newport Beach, CA 92663.
<i>Generic</i> —1-alpha-acetyl-methadol (LAAM). <i>Trade</i> —Not established.	Treatment of heroin addicts suitable for maintenance on opiate agonists.	Dixon and Williams Pharmaceutical Co., 43 Old Wood Road, Bernardsville, NJ 07924.
<i>Generic</i> —1-carnitine. <i>Trade</i> —Vita Carn *.....	Genetic carnitine deficiency *.....	Kendall McGraw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
<i>Generic</i> —1-carnitine. <i>Trade</i> —Vita Carn.....	Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Kendall McGraw Laboratories, P.O. Box 25080, Santa Ana, CA 92799-5080.
<i>Generic</i> —1-carnitine. <i>Trade</i> —Carnitor */**	Primary and secondary carnitine deficiency of genetic origin.*/** Treatment of manifestations of carnitine deficiency in patients with end stage renal disease (ESRD) who require dialysis.	Sigma Tau, Inc., 73 North Beers Str., Holmdel, NJ 07733.
<i>Generic</i> —L-Leucine, L-isoleucine and L-valine. <i>Trade</i> —Not established.	Treatment of amyotrophic lateral sclerosis (ALS).....	Andreas Platakis, M.D., The Mount Sinai Medical Center, Department of Neurology, One Gustave Levy Pl., New York, NY 10029.
<i>Generic</i> —leucovorin calcium. <i>Trade</i> —Wellcovorin.....	Treatment of metastatic colorectal cancer.....	Burroughs Wellcome Co., 3030 Cornwallis Road, Research Triangle, Park, NC 27709.
<i>Generic</i> —leucovorin calcium. <i>Trade</i> —Leucovorin */**	For use in combination with 5-fluorouracil for the therapy of metastatic adenocarcinoma of the colon and rectum. For rescue use after high dose methotrexate therapy in the treatment of osteosarcoma */**.	Lederle Laboratories, Pearl River, NY 10965.
<i>Generic</i> —leuprolide acetate. <i>Trade</i> —Lupron Injection.....	Treatment of central precocious puberty.....	TAP Pharmaceuticals, D-49N, 1400 N. Sheridan Rd., Abbott Park, IL 60064.
<i>Generic</i> —levocabastine HCl. <i>Trade</i> —Not established ..	Treatment of vernal keratoconjunctivitis (VKC).....	Iolab Pharmaceuticals, 500 Iolab Drive, Claremont, CA 91711.
<i>Generic</i> —LHRH [(DES-GLY ¹⁹ -D-Trp ⁶ -Pro ⁹ -N-Ethylamide)]. <i>Trade</i> —Not established.	Treatment of central precocious puberty.....	Roberts Laboratories, Meridian Center III, 6 Industrial Way West, Eatontown, NJ 07724.
<i>Generic</i> —1-5 hydroxytryptophan (L-5HTP). <i>Trade</i> —Not established.	Treatment of postanoxic intention myoclonus.....	Bolar Pharmaceuticals, 130 Lincoln Street, Copiague, NY 11726.
<i>Generic</i> —luteinizing hormone releasing hormone (GnRH). <i>Trade</i> —Not established.	Induction of ovulation in women with hypothalamic amenorrhea due to a deficiency or absence in the quantity or pulse pattern of endogenous GnRH secretion.	Ortho Pharmaceuticals, Route 202, P.O. Box 300, Raritan, NJ 08869-0602.
<i>Generic</i> —mazindol. <i>Trade</i> —Sanorex.....	Treatment of Duchenne muscular dystrophy (DMD).....	Platon J. Collip, M.D., 176 Memorial Dr., Jesup, GA 31545.
<i>Generic</i> —mefloquine HCl. <i>Trade</i> —Mephaquin.....	Treatment of chloroquine-resistant falciparum malaria. Prevention of chloroquine-resistant falciparum malaria.	Mephra AG, 4143 Dornach, Aesch Basel, Switzerland.
<i>Generic</i> —mefloquine HCl. <i>Trade</i> —Lariam.....	Treatment of acute malaria due to Plasmodium falciparum and Plasmodium vivax. Prophylaxis of Plasmodium falciparum malaria which is resistant to other available drugs.	Hoffmann-La Roche Inc., 340 Kingsland Str., Nutley, NJ 07110.
<i>Generic</i> —megestrol acetate. <i>Trade</i> —Megace.....	Treatment of patients with anorexia, cachexia, or significant weight loss (= / < 10% of baseline body weight) and confirmed diagnosis of AIDS.	Bristol-Myers, US Pharmaceutical & Nutritional Group, 2404 Pennsylvania Street, Evansville, IN 47721-0001.
<i>Generic</i> —mesna. <i>Trade</i> —Mesnex */**	For use as a prophylactic agent in reducing the incidence of ifosfamide-induced hemorrhagic cystitis.	Degussa Corporation, P.O. Box 2004, Route 46 at Hollister Rd., Teterboro, NJ 07608.
<i>Generic</i> —mesna. <i>Trade</i> —Not established.....	Inhibition of the urotoxic effects induced by oxazaphosphorine compounds such as cyclophosphamide.	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216-6529.
<i>Generic</i> —methotrexate sodium. <i>Trade</i> —Methotrexate */**	For use with leucovorin rescue in combination with other chemotherapeutic agents to delay recurrence in patients with non-metastatic osteosarcoma who have undergone surgical resection or amputation for the primary tumor.	Lederle Laboratories, Pearl River, NY 10965.
<i>Generic</i> —metronidazole (topical). <i>Trade</i> —MetroGel */**	Treatment of acne rosacea.....	Curatek Pharmaceuticals, 1965 Pratt Blvd., Elk Grove Village, IL 60007.
<i>Generic</i> —metronidazole (topical). <i>Trade</i> —Flagyl.....	Treatment of Grade III and IV, anaerobically infected, decubitus ulcers.	G.D. Searle and Co., Box 5110, Chicago, IL 60680.
<i>Generic</i> —midodrine HCl. <i>Trade</i> —Amatine.....	Treatment of idiopathic orthostatic hypotension.....	Roberts Laboratories, 230 Half Mile Rd., Red Bank, NJ 07701.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of drug	Drug designations	Sponsor name and address
<i>Generic</i> —mitoxantrone HCl. <i>Trade</i> —Novantrone*/**.....	Treatment of acute myelogenous leukemia (AML), also referred to as acute nonlymphocytic leukemia (ANLL).	Lederle Laboratories, Pearl River, NY 10965.
<i>Generic</i> —monoctanoin. <i>Trade</i> —Moctanin*/**.....	Dissolution of cholesterol gallstones retained in the common bile duct.	Ethitek Pharmaceuticals, 8100 North Lawndale Ave., Skokie, IL 60076.
<i>Generic</i> —morphine sulfate concentrate (preservative free). <i>Trade</i> —Duramorph.	For administration via microinfusion devices in repeated doses or constant infusion, for <i>epidural</i> use in the treatment of severe chronic pain which responds inadequately to systemic analgesic therapy or when epidural administration is considered preferable to systemic administration and for <i>intrathecal</i> use in patients with refractory pain due to malignancy.	Elkins-Sinn, Inc., 2 Esterbrook Lane, Cherry Hill, NJ 08003-4099.
<i>Generic</i> —nafarelin acetate. <i>Trade</i> —None established....	Treatment of central precocious puberty.....	Syntex (U.S.A.) Inc., 3401 Hillview Avenue, P.O. Box 10850, Palo Alto, CA 94303.
<i>Generic</i> —naltrexone HCl. <i>Trade</i> —Trexan*/**.....	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I. du Pont de Nemours, dba Du Pont Pharmaceuticals, 1000 Stewart Ave., Garden City, NY 11530.
<i>Generic</i> —oxymorphone HCl. <i>Trade</i> —Numorphan H.P..	Relief of severe intractable pain in narcotic-tolerant patients.	Du Pont Pharmaceuticals, P.O. Box 12, Manati, Puerto Rico 00701.
<i>Generic</i> —PEG-adenosine deaminase (PEG-ADA). <i>Trade</i> —Imudon.	Enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency disease (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
<i>Generic</i> —pentamidine isethionate (Injectable). <i>Trade</i> —Pentam 300*/**.	Treatment of <i>Pneumocystis carinii</i> pneumonia (PCP)*/**.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
<i>Generic</i> —pentamidine isethionate (Injectable). <i>Trade</i> —Not established.	Treatment of <i>Pneumocystis carinii</i> pneumonia (PCP)....	Rhône-Poulenc, 52 Vanderbilt Ave., New York, NY 10017.
<i>Generic</i> —pentamidine isethionate (inhalation). <i>Trade</i> —Pneumopent.	Prevention of <i>Pneumocystis carinii</i> pneumonia (PCP) in patients at high risk of developing this disease.	Fisons Corporation, 2 Preston Court, Bedford, MA 01730.
<i>Generic</i> —pentamidine isethionate (inhalation). <i>Trade</i> —Pentam 300.	Prevention of <i>Pneumocystis carinii</i> pneumonia (PCP) in patients at high risk of developing this disease.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
<i>Generic</i> —pentostatin. <i>Trade</i> —Not established.....	Treatment of Hairy Cell Leukemia.....	Warner-Lambert, 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
<i>Generic</i> —phosphocysteamine. <i>Trade</i> —Not established.	Treatment of cystinosis.....	Medea Research Laboratories, Suffolk Co. Airport, Building 32, Westhampton Beach, NY 11978.
<i>Generic</i> —physostigmine salicylate. <i>Trade</i> —Antilirium....	Friedreich's and other inherited ataxias.....	Forrest Pharmaceuticals, 2510 Metro Blvd., Maryland Heights, MO 64043-9979.
<i>Generic</i> —piracetam. <i>Trade</i> —Nootropil.....	Treatment of myoclonus.....	U.C.B. Secteur Pharmaceutique, 326 Ave. Louise, 105 Brussels, Belgium.
<i>Generic</i> —piritrexim isethionate. <i>Trade</i> —Not established.	Treatment of infections caused by <i>Pneumocystis carinii</i> , <i>Toxoplasma gondii</i> , and <i>Mycobacterium avium-intracellulare</i> .	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
<i>Generic</i> —potassium citrate. <i>Trade</i> —Urocit-K*/**.....	Prevention of calcium renal stones in patients with hypocitraturia. Avoidance of the complication of calcium stone formation in patients with uric acid lithiasis..	Charles Y.C. Pak, M.D., University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
<i>Generic</i> —potassium citrate and citric acid. <i>Trade</i> —Polycitra-K.	Dissolution and control of uric acid and cystine calculi in the urinary tract.	Willen Drug Co., 18 North High Str., Baltimore, MD 21202.
<i>Generic</i> —praziquantel. <i>Trade</i> —Cysticide.....	Treatment of neurocysticercosis.....	EM Pharmaceuticals, 5 Skyline Drive, Hawthorne, NY 10532.
<i>Generic</i> —prednimustine. <i>Trade</i> —Stereocyt.....	Treatment of malignant non-Hodgkin's lymphomas.....	Pharmacia, Inc., 800 Centennial Ave., Picataway, NJ 08855.
<i>Generic</i> —propamidine isethionate (0.1%). <i>Trade</i> —Brolene Eye Drops.	Treatment of <i>Acanthamoeba keratitis</i>	Bausch & Lomb, Inc., 1400 North Goodman Street, Rochester, NY 14692-0450.
<i>Generic</i> —protirelin (TRH). <i>Trade</i> —Thymone.....	Amyotrophic lateral sclerosis (ALS).....	Abbott Laboratories, North Chicago, IL 60064.
<i>Generic</i> —pulmonary surfactant replacement. <i>Trade</i> —Not established.	Prevention and treatment of respiratory distress syndrome (RDS).	California Biotechnology, 2450 Bayshore Pkwy, Mountain View, CA 94043.
<i>Generic</i> —quinacrine HCl. <i>Trade</i> —Not established.....	Prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby Street, Melrose Park, IL 60160.
<i>Generic</i> —rifampin. <i>Trade</i> —Rifadin I.V.....	Antituberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Research Inst., 2110 E. Galbraith, Cincinnati, OH 45215.
<i>Generic</i> —rifampin, isoniazid, pyrazinamide. <i>Trade</i> —Rifater.	Short course treatment of tuberculosis.....	Merrell Dow Research Inst., 2110 E. Galbraith, Cincinnati, OH 45215.
<i>Generic</i> —selegiline HCl. <i>Trade</i> —Deprenyl.....	Adjuvant to levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalic parkinsonism, and symptomatic parkinsonism.	Somerset Pharmaceuticals, One Olde Town Court, Bernardsville, NJ 07924.
<i>Generic</i> —sermorelin acetate [GRF (1-29)NH ₂]. <i>Trade</i> —Not established.	Treatment of idiopathic and organic growth hormone deficiency in children with growth failure.	Serono Laboratories, 280 Pond Street, Randolph, MA 02368.
<i>Generic</i> —Sodium monomercaptoundecahydro-closododecaborate. <i>Trade</i> —Borolife.	Treatment of glioblastoma multiforme as an alternative to conventional photon therapy.	Theragencis Corporation, 900 Atlantic Drive, Atlanta, GA 30318.
<i>Generic</i> —sodium oxybate (gamma-hydroxybutyrate). <i>Trade</i> —Not established.	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Sigma F&D, Div. of Sigma Chemical Co., 3050 Spruce Str., St. Louis, MO 63103.
<i>Generic</i> —sodium oxybate (gamma-hydroxybutyrate). <i>Trade</i> —Not established.	Treatment of narcolepsy and the auxiliary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations and automatic behavior.	Biocraft Laboratories, 92 Route 46, Elmwood Park, NJ 07407.
<i>Generic</i> —sodium pentosan polysulphate. <i>Trade</i> —Elmiron.	Treatment of interstitial cystitis.....	Medical Market Specialties, P.O. Box 150, Boonton, NJ 07005.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of drug	Drug designations	Sponsor name and address
Designated use		
Generic—sodium tetradecyl sulfate. Trade—Sotradecol.	Treatment of bleeding esophageal varices.....	Elkins-Sinn, 2 Esterbrook La., Cherry Hill, NJ 08003-4099.
Generic—somatostatin. Trade—Reducin	Adjunct to the nonoperative management of secreting cutaneous fistulas of the stomach, duodenum, small intestine (jejunum and ileum), or pancreas.	Ferring Laboratories, Montebello Park, 75 Montebello Rd., Suffern, NY 10901.
Generic—somatrem. Trade—Protropin*/*...	Long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—somatrem. Trade—Protropin.....	Short stature associated with Turner's syndrome.....	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080
Generic—somatropin. Trade—Humatrope*/*...	Long-term treatment of children who have growth failure due to inadequate secretion of normal endogenous growth hormone.	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
Generic—somatropin. Trade—Saizen.....	Treatment of idiopathic or organic growth hormone deficiency in children with growth failure.	Sero Laboratories, 280 Pond Street, Randolph, MA 02368.
Generic—somatropin. Trade—protropin II.....	Long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080
Generic—somatropin. Trade—Norditropin.....	Treatment of growth failure in children due to inadequate growth hormone secretion. For adjunctive use in the induction of ovulation in women with infertility due to 1) hypogonadotropic hypogonadism, and 2) bilateral tubal occlusion or unexplained infertility, who are undergoing in-vitro fertilization procedures or in-vitro fertilization with embryo transfer procedures, respectively, and who fail to ovulate in response to gonadotropin therapy alone. Treatment of short stature associated with Turner's Syndrome.	Nordisk-USA, 3202 Monroe Str., Suite 100, Rockville, MD 20852.
Generic—spiramycin. Trade—Rovamycine.....	Symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immuno-deficiency.	Rhône-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—superoxide dismutase (recombinant/human). Trade—Not established.	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Pharmacia-Chiron Partnership, 4560 Horton Street, Emeryville, CA 94608.
Generic—superoxide dismutase (recombinant/human). Trade—Not established.	Prevention of reperfusion injury to donor organ tissue...	Bristol-Myers Co., 5 Research Pkwy, Wallingford, Ct 06492.
Generic—surface active extract of saline lavage of bovine lungs. Trade—Infasurf.	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	Orny, Inc., TDC Incubation Center, 2211 Main Street, Buffalo, NY 14214.
Generic—surfactant (human) (amniotic fluid derived). Trade—Human Surf.	Prevention and treatment of neonatal respiratory distress syndrome (RDS).	T. Allen Merritt, M.D., University of California San Diego Medical Center, 225 W. Dickinson Street, H-814-J, San Diego, CA 92103.
Generic—surfactant TA (modified bovine lung surfactant extract). Trade—Survanta.	Prevention and treatment of neonatal respiratory distress syndrome (RDS).	Ross Laboratories, 625 Cleveland Ave., Columbus, Oh 43216.
Generic—teniposide (VM-26). Trade—Not established.	Treatment of refractory childhood acute lymphocytic leukemia (ALL).	Bristol-Myers Pharmaceutical Research & Development Div., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—teriparatide. Trade—Parathar*/*...	Diagnostic agent to assist in establishing the diagnosis in patients presenting with clinical and laboratory evidence of hypocalcemia due to either hypoparathyroidism or pseudohypoparathyroidism.	Rorer Pharmaceuticals, Fort Washington, PA 19034.
Generic—teripressin. Trade—Glypressin.....	Treatment of bleeding esophageal varices.....	Ferring AB, Soldatorspvagen 5, Box 30651, 200 62 Malmö, Sweden.
Generic—thalidomide. Trade—Not established.....	Treatment of graft versus host disease (GVHD) in patients receiving bone marrow transplantation (BMT). Prevention of GVHD in patients receiving BMT. Treatment and maintenance of reactional lepromatous leprosy.	Pediatric Pharmaceuticals, 379 Thornall Str., Edison, NJ 08837.
Generic—thymoxamine HCl. Trade—Not established....	Reversal of phenyl-ephine-induced mydriasis in patients who have narrow anterior angles and are at risk of developing an acute attack of angle-closure glaucoma following mydriasis.	Iolab Pharmaceuticals, 500 Iolab rive, Claremont, CA 91711.
Generic—tiopronin. Trade—Thiola*/*...	Prevention of cystine nephrolithiasis in patients with homozygous cystinuria.	Charles Y.C. Pak, M.D., The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—tocophersolan oral solution [Vitamin E, d-alpha tocopheryl polyene glycol-1000 succinate (TPGS). Trade—Not established.	Treatment of Vitamin E deficiency resulting from malabsorption due to prolonged cholestatic hepatobiliary disease.	Eastman Pharmaceuticals, 2260 Lake Avenue, Rochester, NY 14650.
Generic—tranexamic acid. Trade—Cyklokapron.....	Treatment of hereditary angioneurotic edema. Treatment of patients undergoing prostatectomy where there is hemorrhage or risk of hemorrhage as a result of increased fibrinolysis or fibrinogenolysis.	Kabi Vitum, 1311 Harbor Bay Pkwy. Alameda, CA 94501.
Generic—tranexamic acid. Trade—Cyklokapron*/*...	Treatment of patients with congenital coagulopathies who are undergoing surgical procedures e.g. dental extractions.	Kabi Vitum, 1311 Harbor Bay Pkwy. Alameda, CA 94501.
Generic—tretinoin. Trade—Not established.....	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctiva and/or cornea) with mucous deficiency and keratinization.	Spectra Pharmaceutical Services, Hanover Business Park, 155 Webster Street, Hanover, MA 02339.

ORPHAN DRUG AND BIOLOGICAL DESIGNATIONS THROUGH 1988—Continued

Name of drug	Drug designations	Sponsor name and address
Designated use		
<i>Generic</i> —trientine HCl. <i>Trade</i> —Cuprid*/**	Treatment of patients with Wilson's disease who are intolerant, or inadequately responsive to penicillamine.	Merck Sharp & Dohme Research Laboratories, West Point, PA 19486.
<i>Generic</i> —trimetrexate glucuronate. <i>Trade</i> —Not established.	Treatment of metastatic colorectal adenocarcinoma. Treatment of metastatic carcinoma of the head and neck (i.e. buccal cavity, pharynx and larynx). Treatment of pancreatic adenocarcinoma. Treatment of Pneumocystis carinii pneumonia (PCP) in AIDS patients. Treatment of patients with advanced non-small cell carcinoma of the lung.	Warner-Lambert, 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
<i>Generic</i> —urofollitropin. <i>Trade</i> —Metrodin*/**	Induction of ovulation in patients with polycystic ovarian disease who have an elevated LH/FSH ratio and who have failed to respond to adequate clomiphene citrate therapy.	Serono Laboratories, 280 Pond Street, Randolph, MA 02368.
<i>Generic</i> —viloxazine HCl. <i>Trade</i> —Vivalan	Treatment of narcolepsy. Treatment of cataplexy.	Stuart Pharmaceuticals, Wilmington, DE 19897.
<i>Generic</i> —zidovudine (AZT). <i>Trade</i> —Retrovir*/**	Treatment of Acquired Immunodeficiency Syndrome (AIDS). Treatment of certain patients with AIDS Related Complex (ARC).	Burroughs Wellcome, 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
<i>Generic</i> —zinc acetate. <i>Trade</i> —Not established.	Treatment of Wilson's disease.	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
<i>Generic</i> —aminopyridine (4-AP). <i>Trade</i> —Not established.	Relief of symptoms of multiple sclerosis (MS).	Rush-Presbyterian-St. Lukes Medical Center, 1753 West Congress Pkwy., Chicago, IL 60612.
<i>Generic</i> —5-AZA-2'-deoxycytidine (DAC). <i>Trade</i> —Not established.	Treatment of acute leukemia.	Pharmachemie BV, Nijverheidsweg 48-50, P.O. Box 552, 2003 RN Haarlem, Holland.
<i>Generic</i> —4-methylpyrazole. <i>Trade</i> —4-MP	Treatment of methanol, ethylene glycol, 2-methoxyethanol or 2-butoxyethanol poisoning.	Kenneth E. McMartin, Louisiana State University Medical Center, Department of Pharmacology, P.O. Box 33932, Shreveport, LA 71130-3932.
<i>Generic</i> —2'-3'-dideoxyadenosine. <i>Trade</i> —Not established.	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	National Cancer Inst., Bldg. 31, Room 3A49, NIH, Bethesda, MD 20892.
<i>Generic</i> —2'-3'-dideoxycytidine. <i>Trade</i> —Not established.	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Hoffmann-La Roche, 340 Kingsland Str., Nutley, NJ 07110.
<i>Generic</i> —2'-3'-dideoxycytidine. <i>Trade</i> —Not established.	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	National Cancer Inst., Bldg. 31, Room 3A49, NIH, Bethesda, MD 20892.
<i>Generic</i> —2'-3'-dideoxyinosine. <i>Trade</i> —Not established.	Treatment of Acquired Immunodeficiency Syndrome (AIDS).	Bristol-Myers Co., 5 Research Pkwy., P.O. Box 5100, Wallingford, CT 06492-7660.
<i>Generic</i> —2, 3-dimercaptosuccinic Acid (DMSA). <i>Trade</i> —Not established.	Treatment of lead poisoning in children.	Johnson and Johnson Baby Products Co., Grandview Road, Skillman, NJ 08858.
<i>Generic</i> —24, 25 dihydroxycholecalciferol. <i>Trade</i> —Not established.	Treatment of uremic osteodystrophy.	Lemmon Co/TAG Pharmaceuticals, P.O. Box 630, Sellersville, PA 18960.

[FR Doc. 89-3592 Filed 2-15-89; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 88N-0402]

Guidelines for Assessing and Managing Iron Deficiency and Anemia in Women of Childbearing Age; Announcement of Rescheduled Closed Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announced in the Federal Register of December 19, 1988 (53 FR 51009), that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB), under its contract with FDA (No. 223-88-2124), was undertaking a study to develop guidelines for assessing and managing iron deficiency and anemia in women of childbearing age. FDA intends to make these guidelines available to health care providers. (For complete information see 53 FR 51009.) The notice also announced

that closed meetings of the ad hoc expert panel, established by FASEB, were scheduled for Monday and Tuesday, March 13 and 14, 1989. Because of conflicting schedules of the panel members, those closed meetings have been rescheduled.

DATES: The closed meetings of the ad hoc expert panel will be held on Tuesday and Wednesday, March 28 and 29, 1989, at 9 a.m.

ADDRESS: The closed meetings will be held at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030, or Elizabeth A. Yetley, Center for Food Safety and Applied Nutrition (HFF-265), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0087.

Dated: February 9, 1989.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3595 Filed 2-15-89; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1989:

Name: National Advisory Committee on Rural Health Care Financing Work Group.

Date and Time: March 6-7, 1989, 8:30 a.m.

Place: Room 18-57 Parklawn Building, Surgeon General's Conference Room, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care service in rural areas. This Work Group is one of three established by the Committee.

Agenda: This meeting will be devoted to continued review and analysis of the issue paper on Medicare Payment Equity for Hospitals; review of materials on physician payment; and review of the schedule work plan activities in preparation of the May and September meeting of the full Committee.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835. Agenda Items are subject to change as priorities dictate.

Date: February 13, 1989.

Jackie E. Baum,

Advisory Committee Management Officer,
HRSA.

[FR Doc. 89-3643 Filed 2-15-89; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval under the Family Violence Prevention and Services program.

ADDRESSES: Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested extension should be sent directly to Shannah Koss-McCallum, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Extension Document

Title: Family Violence Prevention and Services.

OMB No.: 0980-0175.

Description: The information collected is used by OHDS to evaluate applicants who apply for funds which are available to States and Indian Tribes to assist in programs and projects to prevent family violence and provide immediate shelter and related assistance to victims of family violence and their dependents.

Annual Number of Respondents: 130.

Annual Frequency: 1.

Average Burden Per Response: 20.

Total Burden Hours: 2600.

Date: February 10, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89-3649 Filed 2-15-89; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval under the Child Abuse and Neglect Prevention Activities program.

ADDRESSES: Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested extension should be sent directly to Shannah Koss-McCallum, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on Extension Document

Title: Child Abuse and Neglect Prevention Activities.

OMB No.: 0980-0181.

Description: FY 1989 funds are available to those States that in FY 1988 had set up trust funds or other funding mechanisms (including appropriations) only for child abuse and prevention activities.

Annual Number of Respondents: 52.

Annual Frequency: 1.

Average Burden Per Response: 52.

Total Burden Hours: 2704.

Date: February 10, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

[FR Doc. 89-3650 Filed 2-15-89; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, March 27-28, 1989, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9:00 a.m. on March 27 to adjournment on March 28. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Eugene R. Passamani, M.D., Director, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 416, Federal Building, Bethesda, Maryland 20892, (301) 496-2553, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Date: February 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3611 Filed 2-15-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be March 13, 1989. The meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. The Board will

meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: February 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3612 Filed 2-15-89; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on March 2 and 3, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on March 2, and from 9:00 a.m. to adjournment on March 3. In this third one of three planning meetings, the subcommittee will continue discussions on the Outreach Programs of the National Library of Medicine—how the Library can fully inform health care professionals of its products and services, and how to establish a permanent user feedback mechanism. Attendance by the public will be limited to space available.

Ms. Susan P. Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301-496-2311, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: February 8, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-3613 Filed 2-15-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Vaccine Advisory Committee; Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) and the Office of the Assistant Secretary for Health are announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATE: Date, Time and Place: March 9, 1989, at 10:00 a.m.; March 10, 1989, at 9:00 a.m.; Hubert Humphrey Building, Room 703A, 200 Independence Avenue SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Yuth Nimit, Ph.D., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 12420 Parklawn Drive, Park Building, Room 1-24, Rockville, Maryland 20857, (301) 443-0715.

Agenda: Open Public Hearing

Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before February 20, 1989 and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 15 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make an oral presentation at the conclusion of the meeting, if time permits, as the chairperson's discretion.

Open Advisory Committee Discussion

Discussion at this meeting will be directed to NVP opportunities and unmet needs; development of the National Vaccine Plan element on vaccine resources and financing needs; pertussis vaccine and issues in improving existing vaccines; update on adverse event monitoring; the 1989 Report to Congress; plenary discussions

on resources and financing as well as improving existing vaccines. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the Federal Register notices. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: February 2, 1989.

Yuth Nimit,

Executive Secretary, NVAC.

[FR Doc. 89-3651 Filed 2-15-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-09-4111-15; WYW63482]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sweetwater County, Wyoming

February 6, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW63482 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and not less than 16% percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW63482 effective June 1, 1988, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 89-3688 Filed 2-15-89; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-09-3110-CAPL; Casefile No. CA 21738 and CA 23467]

Realty Action Exchange of Public and Private Lands in San Luis Obispo County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—CA 21738 & CA 23476.

SUMMARY: The following described lands will be acquired from The Nature Conservancy by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

CA 21738—North Cousins Exchange

Mt. Diablo Meridian

T. 32 S., R. 20 E.,

Secs. 5, 6, 7, 8, 16, 17, and 18.

Containing 4,519.16 acres, more or less.

CA 23467—Goodwin II Exchange

Mt. Diablo Meridian

T. 31 S., R. 20 E.,

Secs. 27, 28, 33, and 34.

T. 32 S., R. 20 E.,

Secs. 3, 4, 9, 10, 13, 14, and 15.

Containing 6,898.58 acres, more or less.

SUPPLEMENTARY INFORMATION: This notice complements previously published notices for these exchanges, which defined the federal lands involved in these exchanges. These notices were published as follows: CA 21738—North Cousins Exchange—April 15, 1988, Vol. 53, No. 73, pages 12608 and 12609. CA 23467—Goodwin II Exchange—Dec. 3, 1987, Vol. 52, No. 232, pages 46005, 46006, and 46007; corrected Oct. 4, 1988, Vol. 53, No. 192, page 38984. At the time of publication of the previous notices, the private lands to be acquired had not yet been specifically determined, but they were known to be within the Carrizo Plain Natural Area. The purpose of these exchanges is to acquire a portion of the non-federal lands within the Carrizo Plain Natural Area. This Natural Area would promote the conservation of threatened and endangered species and preserve a representative sample of the historic southern San Joaquin Valley flora and fauna. The exchanges are on an equal value basis. Acreage of the private land has been adjusted to approximate equal

values. Full equalization of value will be achieved by future exchanges under a pooling agreement with the Nature Conservancy.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California 93308; (805) 861-4236.

Date: February 10, 1989.

Daniel E. Vaughn,

Acting Caliente Resource Area Manager.

[FR Doc. 89-3689 Filed 2-15-89; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-09-4212-24; N-46317]

Realty Action; Airport Lease Application in Nye County, Nevada

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), Western Best, Ltd. has applied for an airport lease for the following described land:

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,

Sec. 31, S½S½SE¼.

T. 22 S., R. 54 E.,

Sec. 6, lots 10, 11, 15(E½), 16(W½).

Aggregating 122.52 acres (gross).

The area described is located by Nye County, Nevada. The purpose of the lease is to authorize an existing use for which there is no authorization. There are two airstrips which are located on both public and private lands. The airstrips were constructed over eight years ago by someone other than Western Best, Ltd. No new surface disturbance is proposed. The airstrips will be maintained in their existing condition. Upon publication of this notice in the **Federal Register**, the lands are segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for mineral leasing and airport leasing.

For a period up to and including April 3, 1989, interested persons may send comments to the District Manager, Bureau of Land Management, Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada, 89126.

Date: February 2, 1989.

Ben F. Collins,

District Manager.

[FR Doc. 89-3683 Filed 2-15-89; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Avenue NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension.

Bureau/Office: Bureau of Accounts.

Title of Form: Quarterly Report of Revenues, Expenses and Income, Class I Railroads.

OMB Form No.: 3120-0027.

Agency Form No.: RE & I.

Frequency: Quarterly.

Respondents: Class I Railroads.

No. of Respondents: 19.

Total Burden Hrs.: 456 (76 hours per response).

Brief Description of the need & proposed use: Data is used by the Commission to assess industry growth, sudden changes in carrier financial stability and to identify changes and trends that may effect the National Transportation System.

Type of Clearance: Extension.

Bureau/Office: Bureau of Accounts.

Title of Form: Records Retention.

OMB Form No.: 3120-0121.

Agency Form No.: N/A.

Frequency: Recordkeeping.

Respondents: Recordkeeping Requirements of Large Carriers.

No. of Respondents: 2,188 (10 hours per response).

Total Burden Hrs.: 21,880.

Brief Description of the need & proposed use: This retention schedule ensures that carriers can produce the necessary records to validate financial operating and maintenance reports provided to the ICC as prescribed in 49 CFR 1220.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3659 Filed 2-15-89; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Applications To Consolidate, Merge, or Acquire Control

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. If the protest includes a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3 and shall include the required certification. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding.

In the absence of legally sufficient protests as the finance application or any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Application(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notification of effectiveness of this decision-notice or the application of a non-complying applicant shall stand denied.

Findings

The finding for these application are set forth at 49 CFR 1182.6.

MC-F-19342, filed January 30, 1989. Asbury Park Transit Lines, Inc. (APTLI) (a noncarrier)—Purchase—Asbury Park-New York Transit Corporation (APNYTC) (MC-1002), Rollo Transit Corporation (Rollo) (MC-1137), and Coastal Cities Coach Co. (Coastal) (MC-29682).

Representatives: Stephen P. Tomany, 292 Hayward Street, Yonkers, NY 10704. APTLI seeks authority to purchase the operating authority and other assets held by APNYTC, Rollo, and Coastal. Generally, Certificate No. MC-1002 and related subs authorize the transportation of passengers and their baggage, over regular routes, between described points in New Jersey; passengers and their baggage, in special round-trip operations, during authorized racing seasons at named tracks, beginning and

ending at named New Jersey points and extending to named race tracks in Delaware and Maryland; and passengers and their baggage in the same vehicle with passengers, in special operations, in round trip sightseeing or pleasure tours, beginning and ending at named New Jersey points and extending to points in the United States (including Alaska, but excluding Hawaii). Certificate No. MC-1137 and related subs authorize the transportation of passengers and their baggage, over regular routes, from New York, NY to points in New Jersey and between points in New Jersey; and passengers, in charter and special operations, between points in the United States (except Hawaii). Certificate No. MC-29682 and related subs authorize the transportation of passengers over, regular routes, between points in New Jersey, and between points in New Jersey and New York, NY. Temporary authority under 49 U.S.C. 11349 for transferee to lease the operating rights and other assets of transferor was granted on February 6, 1989. APTLI is controlled by Frank and Josephine Tedesco who also control Academy Bus Tours, Inc. (MC-165004), Academy Lines, Inc. MC-106207, Commuter Bus Line, Inc. (MC-162133), and Consolidated Bus Service, Inc. (MC-144124). The Commission previously approved the common control of these carriers.

Decided: February 9, 1989.

By the Commission, Motor Carrier Board, Members Grossman, Hartley, and Metz.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3658 Filed 2-15-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 217)]

Chicago and North Western Transportation Co.; Abandonment; Between Steamboat Rock and Hampton in Hardin and Franklin Counties, IA; Findings

The Commission has found that the public convenience and necessity permit Chicago and North Western Transportation Company to abandon its 27.25 mile line of railroad between Steamboat Rock (milepost 212.0) and Hampton (milepost 184.75), and 3.05 miles of side track and yard track, in Hardin and Franklin Counties, IA.

A certificate will be issued authorizing abandonment unless within 15 days after the publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail

service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 8, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-3657 Filed 2-15-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 85X)]

Missouri Pacific Railroad Co.; Abandonment Exemption; Near Wallis in Greene County, MO

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 1.17-mile line of railroad, between milepost 505.42 and milepost 506.59, near Wallis, in Greene County, MO.

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 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 March 18, 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 February 27, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 8, 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 representatives: Joseph D. Anthofer, Jeanna L. Regier, Room 830, 1416 Dodge Street, 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 February 21, 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: February 9, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-3655 Filed 2-15-89; 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.

[Docket No. AB-33 (Sub-No. 55)]

**Union Pacific Railroad Co.;
Abandonment; Between Echo and
Park City and Between Keetley
Junction and Phoston, in Summit and
Wasatch Counties, UT; Findings**

The Commission has issued a certificate of interim trail use or abandonment authorizing Union Pacific Railroad Company to discontinue service over its 27.6 mile rail line between Echo (milepost -0.2) and Park City (milepost 27.4), and its 2.5 mile rail line between Keetley Junction (milepost 0.0) and Phoston (milepost 2.5) in Summit and Wasatch Counties, Utah. The certificate will become effective 30 days after this publication unless the Commissioner also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Decided: February 10, 1989.

Noreta R. McGee,
Secretary.

[FR Doc. 89-3656 Filed 2-15-89; 8:45 am]
BILLING CODE 7035-01-M

**JUDICIAL CONFERENCE OF THE
UNITED STATES**

**Meeting of the Judicial Conference
Advisory Committee on Bankruptcy
Rules**

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Advisory Committee on Bankruptcy Rules.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Advisory Committee on Bankruptcy Rules to consider proposed amendments to the Federal Bankruptcy Rules under the provisions of Chapter 131 of Title 28,

United States Code. The meeting will be open to public observation.

DATES: The meeting will be held on March 16 and 17, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held in the Pointe At Squaw Peak Hotel, Phoenix, Arizona, Room 2202.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, Telephone: (202) 633-6021.

Dated: February 10, 1989.

James E. Macklin, Jr.,
Secretary, Committee on Rules of Practice
and Procedure.

[FR Doc. 89-3614 Filed 2-15-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Order No. 1323-89]

**Delegation of Certification Authority
For Undercover Operations**

Pursuant to section 204(b)(1), of Pub. L. 100-459, such authority as is conferred upon the Attorney General to certify that any action authorized by subparagraphs (A), (B), (C), and (D) of paragraph (b)(1) of section 204, is necessary for the conduct of an undercover operation by the Federal Bureau of Investigation, is hereby delegated to each of the following members of the Undercover Operations Review Committee: Gerald E. McDowell, Chief, Public Integrity Section, and Michael A. DeFeo, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division.

Date: February 9, 1989.

Dick Thornburgh,
Attorney General.

[FR Doc. 89-3604 Filed 2-15-89; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree Pursuant
to the Resource Conservation and
Recovery Act; Modern Plating Corp.**

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on February 7, 1989, a proposed Consent Decree in *United States v. Modern Plating Corp.* Civil Action No. 87C23315, was lodged with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves a

judicial enforcement action brought by the United States against Modern Plating Corp. Under the Resource Conservation Recovery Act (RCRA) to enforce compliance under Section 3008 of RCRA, and with various state and federal regulations as outlined in the Consent Decree, at its electroplating facility in Rockford, Illinois.

The proposed Consent Decree requires the company to continue weekly inspections of the drum and tank storage areas for malfunctions and deterioration; to refrain from adding wastes to its surface impoundments; to maintain an adequate closure plan at the facility; to continue to monitor groundwater at the facility; and to allow the Environmental Protection Agency access to the facility in order to determine compliance. Modern Plating is also required to obtain sudden liability insurance for its container and tank storage area and sudden and non-sudden liability insurance for its surface impoundments. Until Modern Plating obtains sudden and non-sudden liability insurance for the impoundments, or the impoundments are closed, Modern Plating is required to periodically demonstrate its continuing best efforts to obtain such insurance. If Modern Plating fails to obtain sudden liability coverage for the container and tank storage areas within six months of the entry of the Decree, Modern Plating will discontinue use of the container and tank storage areas and submit closure plans. In addition, the Decree requires Modern Plating to pay a civil penalty of \$20,000 in four installments over eighteen months following the entry of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC and should refer to *United States v. Modern Plating Corp.*, D.J. Ref. 90-7-1-396.

The proposed Consent Decree may be examined at the office of the United States Attorney, 211 South Court Street, Rockford, Illinois 61101 and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1748, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be

obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-3690 Filed 2-15-89; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: February 9, 1989.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0007.

Form Number: NCUA 9653.

Type of Review: Renewal.

Title: Continued Insurability Status Report.

Description: In accordance with agreements reached with state authorities and in an effort to reduce duplication of supervision efforts, NCUA accepts state examination reports in determining the continued insurability of state chartered credit unions. This information collection (NCUA 9653) provides in consolidated form essential information by determining continued insurability.

Respondents: State credit union authority.

Estimated Number of Respondents: 46.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Annual.

Estimated Total Reporting Bureau: 2,024 hours.

OMB Number: 3133-0076.

Form Number: NCUA 8040.

Type of Review: Reinstatement/Renewal.

Title: Voluntary Liquidation Procedures for Federal Credit Unions.

Description: This information collection provides suggested forms and outlines procedures for voluntary liquidation of federal credit unions by credit union officials.

Respondents: Credit Union Officials.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Response: 20 hours.

Frequency of Response: Once per respondent.

Estimated Total Reporting Bureau: 500 hours.

Clearance Officer: Wilmer A. Theard, (202) 682-9700, National Credit Union Administration, Room 7344, 1776 G Street, Washington, DC 20456.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 89-3691 Filed 2-15-89; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL ECONOMIC COMMISSION

Meeting

February 14, 1989.

AGENCY: National Economic Commission.

ACTION: Date change of Public Meeting on February 21.

SUMMARY: The National Economic Commission meeting scheduled for February 21, 1989 has been rescheduled for Wednesday, February 22, 1989 from 1:30 to 3:00 p.m. The agenda and room will be announced. The commission was established by Section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, enacted December 22, 1987.

Date, Time and Place: February 22, 1989 at 1:30 p.m., room to be announced.

Open Meeting: All meetings of the commission will be open to the public.

For Additional Information: Jim Hildreth at 703-425-8986 or 202-789-1993, National Economic Commission, 734 Jackson Place, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: See Federal Register, Volume 53, No. 80, Tuesday, April 26, 1988, Page 14871.

Drew Lewis,

Co-Chairman.

Robert S. Strauss,

Co-Chairman.

[FR Doc. 89-3749 Filed 2-15-89; 8:45 am]

BILLING CODE 8820-45-M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

The National Science Foundation announces the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: March 5, 1989 from 3:00 p.m. to 10:00 p.m.; March 6, 1989 from 8:30 a.m. to 5:00 p.m.

Place: Holiday Inn O'Hare, Kennedy Room, 5440 North River Road, Rosemont, Illinois 60018.

Type of meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

March 5

- Discussion of SNO, LCD, Gammasphere Detector Proposals
- Discussion of Long Range Planning Activities

March 6

- Response to Charge Concerning KAON Initiative
- Response to Charge Concerning Instrumentation
- Response to Charge Concerning Detector Proposals
- Establish Procedures for Formulating Long Range Plan
- Other Business.

M. Rebecca Winkler,

Committee Management Officer.

February 13, 1989.

[FR Doc. 89-3609 Filed 2-15-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Occupational and Environmental Protection Systems; Meeting

The ACRS Subcommittee on Occupational and Environmental Protection Systems will hold a meeting

on March 1 and 2, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, March 1, 1989—8:30 a.m.

until the conclusion of business

Thursday, March 2, 1989—8:30 a.m. until the conclusion of business

The Subcommittee will discuss the general status of emergency preparedness for nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 10, 1989.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 89-3638 Filed 2-15-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing; Correction

On January 31, 1989, The Federal Register published the Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing for the River Bend Station, Unit 1. On page 4928, paragraph 5, the licensee's December 16, 1988 license application was referenced. The Notice should also have referenced the licensee's January 24, 1989 submittal.

Dated at Rockville, Maryland, this 9th day of February 1989.

For the Nuclear Regulatory Commission.

Kenneth L. Heitner,

Acting Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-3639 Filed 2-15-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric and Gas Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Public Service Electric and Gas Company (the licensee) to withdraw its October 15, 1984 application for a proposed amendment to Facility Operating License No. DPR-70 for Salem Unit 1 located in Salem County New Jersey.

The amendment would have added MODE 2 to Table 3.3-3, Item 8e, in the APPLICABLE MODE column. However, the proposed Table had an error.

The Commission issued a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing which was published in the Federal Register on July 17, 1985 (50 FR 29014). By letter dated February 2, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 15, 1984 and the licensee's letter dated February 2, 1989 withdrawing the application for

amendment. The above documents are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 8th day of February 1989.

For the Nuclear Regulatory Commission,
James C. Stone,
Project Manager, Project Directorate I-2,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.

[FR Doc. 89-3640 Filed 2-15-89; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Final Action on Amendments to Columbia River Basin Fish and Wildlife Program for 1989

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final action on spill amendments to the Columbia River Basin Fish and Wildlife Program for 1989; extension of public comment period regarding spill after 1989.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then. On November 23, 1988, the Council published notice of proposed amendments to the program to incorporate the spill provisions of an agreement negotiated by the region's state and federal fish and wildlife agencies, Indian tribes, Bonneville, and the Pacific Northwest Utilities Conference Committee, for spills at Lower Monumental, Ice Harbor, John Day, and The Dalles Dams, for the ten-year period beginning December 31, 1988 (agreement). Public hearings on the proposed amendments were held in Idaho, Montana, Oregon, and Washington, in December, 1988, and public comment was received through February 8, 1989. On February 8, 1989, the Council adopted amendments incorporating the spill standards of the agreement (section III) for 1989 only, and left this amendment proceeding open for

the period after 1989. The Council's decision is intended to constitute final action, subject to challenge, with respect to the 1989 spill season. This amendment process will remain open to allow further public comment through April 14, 1989, solely regarding the advisability of adopting the agreement's spill provisions for the period after 1989.

Effective Date of Council Action: The Council finds that: (1) The 1989 spill season will begin on April 15; (2) affording appropriate protection to this year's fish migration is extremely important; (3) it is essential to avoid implementation problems, such as occurred in past years; and (4) to avoid such problems, it is important to allow the Army Corps of Engineers sufficient time to take the Council's action into account. These reasons constitute good cause for this amendment to take effect immediately upon publication of this notice of amendments.

For a Copy of the 1989 Amendments and the Council's Response to Comments: Contact Judi Hertz at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Public Comment Regarding Spill for the Period After 1989: The Council will continue to receive comment regarding the advisability of incorporating the agreement's spill standards for the period after 1989 through the full term of the agreement. All written comments must be received in the Council's central office, 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, by 5 p.m. Pacific time on April 14, 1989. The Council may shorten the comment period to allow the Council to act at its April 12-13 meeting if the agreement is expected to be signed before April 14. Appropriate notice will be given if this occurs. Comments should be submitted to Dulcy Mahar, Director of Public Involvement, at this address. Comments should be clearly marked "Spill Comments."

After the close of written comment, the Council may hold consultations with interested parties to clarify points made in written comment. Consultations may be held up to the time of the Council's final action in this rulemaking.

For a Copy of the Spill Agreement, or for Further Information: Contact Judi Hertz at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222-5161, toll free 1-800-222-3355 in

Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-3596 Filed 2-15-89; 8:45 am]

BILLING CODE 0000-00-M

PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

Meeting

ACTION: Notice of Meeting of President's Commission on Federal Ethics Law Reform.

SUMMARY: This notice announces a meeting of the President's Commission on Federal Ethics Law Reform. The purpose of this meeting is to continue work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the government-wide ethics program. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and its implementing regulation, 41 CFR 101.6.

DATE: February 28, 1989, 9 a.m.

ADDRESS: U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Conference Room B, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT:

Amy L. Schwartz, Executive Director of the Commission, at 202-456-7953 or 202-633-3522.

SUPPLEMENTARY INFORMATION: At this time, the Commission believes that, in view of the short time frame available to it before its recommendations are due to the President, it does not have time to accept oral testimony. The Commission welcomes written comments, however, which should be submitted to: President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Room 6237, Tenth and Constitution Avenue, NW., Washington, DC 20530.

It would be extremely helpful if comments included an initial executive summary.

Persons who wish to attend the Commission's meetings should contact Jean Schmidlin at 202-633-4667 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the

building, midway between Ninth and Tenth Streets.

Malcolm Wilkey,

Chairman.

[FR Doc. 89-3605 Filed 2-15-89; 8:45 am]

BILLING CODE 4410-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26536; File No. SR-PHLX-89-05]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Electronic Blue Sheetting

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 26, 1989, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4, hereby proposes for approval Rule 785 under the Rules of the Phlx Board of Governors to govern the automated submission of trading data. The following is the full text of the proposed rule; all text is new.

Automated Submission of Trading Data.

Rule 785. A member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, allied member, approved person, partner, officer, director, or employee thereof, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the member or the

member organization submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) or member organization(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale and if an options contract whether open long or short or close long or short;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the member or member organization for any customer account, such member organization shall submit or cause to be submitted the following information:

(1) Data elements (1) through (8) as contained in paragraph (a) above; and

(2) Customer name, address(es) branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).

(3) If transaction was effected for a member broker-dealer customer, whether the broker-dealer was acting as principal or agent on the transaction or transactions that are the subject of the Exchange's request.

(c) In addition to the above trade data elements, a member or member organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.

(d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section

(A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is identical to New York Stock Exchange, Inc. ("NYSE") Rule 410A.¹ The proposal is an enabling rule that authorizes the Phlx to implement more efficient methods of receiving account information from member firms for regulatory purposes. Once the rule is effective, the Phlx is prepared to implement the following specific electronic account information procedure. Through a coordinated effort by the eight national securities and option exchanges and the National Association of Securities Dealers, Inc. ("NASD"), a uniform procedure has been adopted for member organization to supply account information upon request by a self-regulatory organizations ("SRO") for their principal and customer accounts through an electronic hook-up with Securities Industry Automation Corporation ("SIAC") (such requests are commonly referred to as "blue sheet" requests). This should result in more expeditious investigations by surveillance staff as response times to blue sheet requests will be shortened significantly. In many cases replacing manual reviews with an electronic search and send procedure will reduce costs to member firms.

In connection with adoption of this procedure, the exchanges and the NASD are requiring their respective members to furnish such account information through this electronic hook-up with SIAC. This requirement is to apply to all members, though proprietary traders automatically meet the requirement if their clearing agent is connected, and small firms can be exempted if it can be established that any such firm is in a position to furnish blue sheet information on a timely basis without benefit of the electronic hook-up.

The proposed rule change is consistent with section 6(b)(1) of the Act which provides that the Phlx "must have" the capacity to be able to carry out the purposes of this title and to comply, and * * * to enforce compliance by its members and persons

¹ NYSE Rule 410A and the virtually identical American Stock Exchange Rule 153A were approved by the Commission in Securities Exchange Act Release No. 28859, June 27, 1988, 53 FR 25029. Subsequently, the Commission approved the virtually identical Chicago Board Options Exchange Rule 15.7 in Securities Exchange Act Release No. 28235, November 1, 1988, 53 FR 44668.

associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange. In addition, insofar as the proposed rule change would apply computer efficiencies to the transfer of necessary regulatory information to a SRO, the proposal is consistent with section 11A(a)(1)(B) of the Act, which expresses the Congressional finding that "[n]ew data processing and communication techniques creates the opportunity for more efficient and effective market operations."

Finally, the proposed rule change authorizes the Phlx to grant exemptions under appropriate circumstances. The Phlx has expressed in this filing that such exemptive relief may be appropriate for small firms that can establish that they can provide the required information timely without an electronic hook-up. In this regard, the Phlx believes that the proposal is consistent with section 6(b)(8) of the Act in that the proposal should "not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title."

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or,
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-89-05 and should be submitted by March 9, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-3672 Filed 2-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16806; (812-7089)]

First Pacific Mutual Fund, Inc., et al.; Application

February 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Pacific Mutual Fund, Inc. (the "Fund") and First Pacific Mutual Fund Services, Inc. (the "Distributor") on behalf of any other existing or future registered investment company for which the Distributor acts as principal underwriter (collectively with the Fund, "Exempt Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d), and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order permitting the Exempt Funds to assess and waive a contingent deferred sales load ("CDSL").

Filing Dates: The application was filed on August 5, 1988 and amended on December 19, 1988, and February 7, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on

March 6, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 1441 Victoria Street, #901, Honolulu, Hawaii 96822.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund registered under the 1940 Act as an open-end, non-diversified, management investment company and its registration statement (File No. 33-23452) became effective on November 23, 1988. The Fund was organized as a corporation under the laws of the State of Maryland. Shares of the Fund are offered for sale to the public through the Distributor, a Hawaiian corporation which is a wholly-owned subsidiary of the Fund's investment manager, First Pacific Management Corporation ("Manager"), also a Hawaiian corporation.

2. The Fund offers its shares without the imposition of a front-end sales load so that investors will have the entire amount of their purchase payments credited to their accounts and fully invested. Applicants, however, request an exemption permitting the assessment and waiver of a CDSL upon certain early redemptions of shares of each Exempt Fund by its shareholders. The CDSL will not exceed 4% of value of shares redeemed by the Exempt Fund's shareholders and will be paid to the Distributor to compensate it for services and expenses related to offering Exempt Fund shares for sale to the public.

3. The Fund also pays compensation to the Distributor pursuant to a plan of distribution adopted in accordance with Rule 12b-1 (the "Plan") under the 1940 Act at an annual rate of .60% of the net asset value of the Fund's shares. Future

Exempt Funds may similarly pay compensation to the Distributor pursuant to a Plan. The Distributor will in turn pay up to 3% of the purchase price of shares sold through each authorized dealer selling fund shares. The directors of each Exempt Fund will approve and review their Plan in accordance with the procedures set forth in Rule 12b-1 and determine whether the amounts paid through the Plan are reflected in the corresponding reduction of the CDSL.

4. Applicants will impose a CDSL on any redemption the amount of which exceeds the aggregate value at the time of redemption of (a) all shares in the account purchased more than four years prior to the redemption, (b) all shares in the account acquired through reinvestment of dividends and capital gains distributions and, (c) the increase, if any, of value of all other shares in the account over the purchase price of such shares. Thus, no CDSL will be imposed on the redemption of shares on amounts referred to in clauses (a), (b), or (c) above.

5. The amount of a CDSL payable upon redemption is calculated as being the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or lower percentage of the net asset value of the shares at the time of redemption. The maximum amount of any CDSL, or combination of CDSL, and any sales load payable at the time the shares are purchased will not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice promulgated by the National Association of Securities Dealers. No amount will be charged to shareholders or to the Exempt Fund that is intended as payment of interest or any similar charge related to a CDSL.

6. Redemptions will be processed in a manner to maximize the amount of redemption which will not be subject to a CDSL. Accordingly, each redemption will be assumed to have been made first from the exempt amounts referred to in clauses (a), (b), and (c) above, and second through liquidation of those shares in the account referred to in clause (c) on a first-in-first-out basis.

7. The amount of the CDSL imposed upon redemption, if any, will depend upon the year during which the shares being redeemed were purchased with all purchases during a month being aggregated and deemed to have been made on the first day of the month, as follows: 4% if the redemption occurs during the first year after purchase; 3% if

the redemption occurs during the second year; 2% if the redemption occurs during the third year; and 1% if the redemption occurs during the fourth year. No CDSL will be imposed on shares redeemed after four years from the date of purchase.

8. Applicants further request an exemption to permit each Exempt Fund to waive the CDSL with respect to the following redemptions of such Exempt Fund's shares: (i) Redemptions of shares held by the Manager, its affiliates or their respective directors, officers, employees the directors, officers and employees of the Exempt Funds, and any sub-advisor or investment counsel to the Exempt Funds and the directors, officers and employees of any such sub-advisor or investment counsel; (ii) redemptions following the death or disability of a shareholder; (iii) redemptions in connection with certain distributions from IRAs, qualified retirement plans or tax-sheltered annuities; (iv) involuntary redemptions by an Exempt Fund of shares in shareholder accounts that do not comply with the minimum balance requirement; (v) redemptions the proceeds of which are reinvested in shares of the same Exempt Fund within thirty days after such redemption and (vi) redemptions of shares purchased during the initial 30-day period of the Fund's operations. The application contains a full description of such waivers.

Applicants' Legal Conclusion

1. The Fund and the Distributor believe that the CDSL qualifies as a "sales load" within the meaning of section 2(a)(35) of the 1940 Act. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the 1940 Act, and to permit the CDSL to be waived in connection with redemptions in certain affiliated purchasers as described above, the Fund and the Distributor, pursuant to section 6(c) of the 1940 Act, request an exemptive order of the Commission exempting the Exempt Funds from the 1940 Act.

2. Applicants submit that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The CDSL permits the shareholders to have the advantage of more investment dollars working for them from the time of their purchase of shares of the Fund than is possible with traditional front-end sales load. The CDSL and the Fund's Plan are fair to the Fund and its

shareholders, and designed to achieve parity between those shareholders electing to hold their shares and continue as Fund shareholders and shareholders electing early redemption of their shares. The CDSL formula is intended to achieve such parity regardless of whether the value of the shares increase, decrease, or remain unchanged.

3. The proposed waivers of the CDSL will not discriminate against the shareholders of the Fund. In each situation in which the CDSL could be waived, deferred or varied, the redeeming shareholder (i) would have purchased shares under circumstances that did not require the Distributor to incur substantial additional distribution expenses, (ii) would be a member of a class of shareholders favored under the federal tax or securities laws, or (iii) would have had no control over the timing of such redemption. Furthermore, such waivers are consistent with the policies underlying Rule 22d-1 under the 1940 Act, which permits scheduled variations in or elimination of the sales load for particular classes of investors.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b-1 (or any successor rule) under the 1940 Act, as such rule may be amended from time to time.

3. To the extent that the Fund or the Distributor has imposed any CDSL or waived such sales loads as described in the application prior to the date of receiving the order requested herein, each Applicant is relying on its own interpretation of the 1940 Act and the rules thereunder and understands that any such order will be effective and apply prospectively on and after the date of such order.

4. The CDSL will comply with the requirements of Proposed Rule 6c-10 under the 1940 Act, if and when adopted.

5. The Exempt Funds will maintain, in one place, all of the records relating to the assessment and waiver of the CDSL under the exemption requested herein, and the Exempt Funds will make available such records upon request by the SEC.

6. Applicants agree that the exemptive relief requested does not cover any person, or any affiliated person of such person (or any affiliated person of such

affiliated person), who holds an Exempt Fund out to the public, or who, directly or indirectly, causes an Exempt Fund to be held out to the public, as being "no-load" or uses, or who, directly or indirectly, causes the use of terminology that given the context and presentation, is likely to convey to investors the impression that no charges for sales or promotional expenses are imposed on shares issued by the Exempt Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-3616 Filed 2-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16805; 812-7101]

The Guardian U.S. Government Trust et al.; Application

February 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval of Certain Offers of Exchange under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Guardian U.S. Government Trust ("Government Trust"), The Guardian Park Ave. Fund, Inc. ("Park Ave. Fund") and The Guardian Cash Management Trust ("Cash Trust") (collectively, the "Existing Funds"), Guardian Investor Services Corporation ("GISC"), and on behalf of each investment company (or portfolios thereof) ("Additional Funds") that might be created in the future, which have substantially identical sales charge characteristics as the Existing Funds and for which GISC serves as principal underwriter (the Existing Funds and Additional Funds will be referred to collectively as the "Funds" or individually as a "Fund").

Relevant 1940 Act Section: Approval requested under Section 11(a).

Summary of Application: Applicants seek an order approving certain exchange offers to be made by the Funds or which may be made between the Additional Funds on a basis other than the relative net asset values of the shares to be exchanged.

Filing Dates: The application was filed on August 19, 1988, and amended and restated on December 7, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must

be received by the SEC by 5:30 p.m., on March 2, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, Washington, DC 20549. Applicants, 201 Park Avenue South, New York, NY 10003.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Existing Funds is a diversified, open-end management investment company registered under the 1940 Act. Each Fund (except the Government Trust, the registration statement of which is not yet effective under the Securities Act of 1933 (the "1933 Act")) offers shares under a currently effective registration statement under the 1933 Act. The Existing Funds have not offered an exchange privilege previously.

2. The shares of the Existing Funds are offered (or with respect to the Government Trust, will be offered upon the effectiveness of its registration statement) at the public offering prices described in the application. For purposes of this application, Funds with no sales are referred to as "No Load Funds", and Funds with a sales load equal to or similar to that of The Park Ave. Fund (4.5% of the offering price) are referred to as "Mid Load Funds", and Funds with sales charges that higher than the Mid Load Funds are referred to as "Load Funds."

3. GISC is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. GISC, which is a wholly-owned subsidiary of The Guardian Life Insurance Company of America ("Guardian Life"), serves as the

investment adviser and principal underwriter for The Park Ave. Fund and the Cash Trust and is expected to serve in the same capacity for the Government Trust.

4. Applicants seek the ability to permit the following exchange offers:

(a) Shares of a Load Fund may be exchanged for shares of any other Load Fund, any Mid Load Fund or any No Load Fund at the relative net asset values per share at the time of the exchange. After the first exchange of shares of a Load Fund for shares of a Mid Load Fund or a No Load Fund, the shares in such Mid Load or No Load Fund acquired in the exchange from the Load Fund may then be exchanged for shares of any Load Fund on the basis of the relative net asset values of the shares at the time of the subsequent exchange.

(b) Shares of a Mid Load Fund may be exchanged for shares of any other Mid Load Fund or any No Load Fund at the relative net asset values at the time of the exchange. Shares of a Mid Load Fund may be exchanged for shares of any Load Fund at the relative net asset values at the time of the exchange plus a sales charge equal to the difference between the applicable sales charge assessed by the Load Fund and the sales charge already assessed by the Mid Load Fund, except where the shares of the Mid Load Fund were themselves acquired in an exchange from a Load Fund.

(c) Shares of a No Load Fund may be exchanged for shares of any other No Load Fund at the relative net asset values at the time of the exchange. Shares of a No Load Fund may be exchanged for shares of a Mid Load Fund or Load Fund at the relative net asset values at the time of the exchange plus a sales charge equal to the applicable sales charge assessed by the Mid Load Fund or the Load Fund, except that (i) where the shares of the No Load Fund were themselves acquired in an exchange from a Mid Load Fund, an exchange into a Load Fund will be made at the relative net asset values at the time of the exchange plus a sales charge equal to the difference between the applicable sales charge assessed by the Load Fund and the sales charge already assessed by the Mid Load Fund, and an exchange into a Mid Load Fund will be made at the relative net asset values and (ii) where the shares of the No Load Fund were themselves acquired in an exchange from a Load Fund, the exchange will be made at the relative net asset values at the time of the exchange.

5. Any sales load charged with respect to the acquired Fund will be a percentage that is no greater than the excess, if any, of the rate of the sales load applicable to that security in the absence of an exchange over the total rate of any sales loads previously paid on the exchanged security.

6. Funds within a single category may have sales charges that vary slightly from the sales charges of other Funds within the same category. No incremental sales charge will be imposed, however, upon the exchange of shares of Funds within the same category.

7. In cases where only a partial exchange of shares held in a Fund is made, the shares upon which the highest sales charge rate was deemed previously paid will be treated as exchanged before shares upon which a lower rate was deemed paid. With respect to exchanges from Funds having scheduled variations in their sales charges, it will be assumed that the exchanging shareholder paid the maximum sales charge imposed by the respective Fund on the shares to be exchanged. Shares acquired through dividend reinvestment will be deemed to have been sold with a sales load equal to the highest sales load rate applicable to the Fund.

8. In addition to the sale charge, if any, that may be imposed upon an exchange of shares, Applicants may charge a shareholder a nominal administrative fee on each exchange to compensate GISC for the expenses it incurs in connection with the administration of such exchanges. Initially, Applicants do not intend to charge an administrative fee on exchanges, but reserve the right to do so in the future. In no event, however, will Applicants charge a fee in excess of \$ 5.00 on exchange transactions.

9. GISC will not pay dealers or registered representatives a commission with respect to exchange transactions. Thus, Applicants foresee no motivation for abuse by a dealer or registered representative by initiating exchanges on behalf of their clients solely for the dealer's or registered representative's personal gain. Nevertheless, GISC has established a sufficient internal monitoring system and review procedures to assure that exchanges are made at the request of the shareholder.

10. Any administrative fee or any scheduled variations thereof will be uniformly applied to all offerees of the class specified. Any variations in sales charges on sales of shares of the Funds, by means of exchanges or otherwise, will be effectuated in accordance with Rule 22d-1 under the 1940 Act.

11. Shareholders of the Funds will be notified of the exchange privilege and the administrative fee, if any, by means of the prospectuses for the Funds and by means of other communications that describe the exchange privilege, including sales literature and advertising. Applicants reserve the right to modify or terminate the exchange privilege and will disclose the reservation of such right by means of the prospectuses for the Funds and in sales literature and advertising that discuss the exchange privilege. Applicants undertake to give shareholders at least 60 days' written notice of any modification or termination of the exchange privilege, except in the case of a reduction or elimination of any administrative fee or sales charge, in which case notice shall not be required; provided, however, that the temporary cessation of the sale of Fund shares under extraordinary circumstances, such as when the Fund is unable to effectively invest amounts in accordance with applicable investment objectives, policies and restrictions or the suspension of the redemption of Fund shares pursuant to section 22(e) of the 1940 Act and rules and regulations thereunder, shall not be considered a modification or termination of the particular Fund's exchange privilege.

Applicants' Legal Conclusions

1. Applicants submit that the order requested is appropriate and in the public interest and is consistent with the policies underlying the provisions of the 1940 Act.

2. Applicants submit that the proposed exchanges will be consistent with revised proposed Rule 11a-3 which would permit mutual funds and their principal underwriters to make exchange offers to shareholders of another fund in the same group of investment companies.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicants will comply with the provisions of Rule 12b-1 under the 1940 Act as currently adopted and as that rule may be modified by the SEC in the future.

3. Applicants will comply with the provisions of revised proposed Rule 11a-3 under the 1940 Act as is currently stated and as it may be adopted or modified in the future.

4. Any subsequent similar Additional Funds of Applicants will limit any future

offers of exchange to the terms and conditions described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-3617 Filed 2-15-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24819]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

February 9, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 6, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the manner. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Mississippi Power Company (70-7204)

Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a posteffective amendment to its declaration pursuant to sections 6(a), 7 and 12(c) of the Act and Rules 42 and 50 thereunder.

Mississippi was authorized by supplemental order, dated October 21, 1988 (HCAR No. 24732), to issue and sell, through March 31, 1989, \$40 million

of First Mortgage Bonds ("Bonds") and \$20 million of new preferred stock ("New Preferred"). Mississippi now seeks to extend its authorization to issue and sell, through March 31, 1991, \$40 million of Bonds and \$20 million of New Preferred.

Alabama Power Company (70-7205)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, an electric utility subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application pursuant to sections 6(b), 9(a) and 10 of the Act and Rules 50 and 50(a)(5) thereunder.

Alabama proposes to extend its authorization through March 31, 1991, to: (1) Finance pollution control facilities in an amount of up to \$125 million; (2) issue and sell up to \$175 million of first mortgage bonds by competitive bidding; and (3) issue and sell up to \$10 million of Class A Preferred Stock by competitive bidding, which had been previously granted through March 31, 1989 by supplemental order dated November 11, 1988 (HCAR No. 24760).

Middle South Utilities, Inc. (70-7611)

Middle South Utilities, Inc. ("Middle South"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed a declaration pursuant to sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 promulgated thereunder.

Middle South proposes to amend its Restated Articles of Incorporation ("Charter") to change its corporate name. Middle South also proposes to amend its By-Laws ("By-Laws") to provide that the annual meeting of stockholders of Middle South shall be held on such date and at such time of day as shall have been fixed by resolution of Middle South's Board of Directors ("Board"). In conjunction with such proposed By-Law amendment, Middle South proposes to adopt certain related technical amendments to the provisions of its By-Laws regarding advance notice of stockholder-proposed business and of stockholder nominations for directors of Middle South to be brought before the annual meeting of stockholders ("Advance Notice By-Laws").

Middle South proposes to take appropriate steps to submit to the stockholders for approval, at the Annual Meeting of Stockholders to be held on May 19, 1989 ("Annual Meeting"), the proposals to amend the charter to change Middle South's corporate name and to amend the By-Laws to allow for the fixing of the date and time of the

annual meeting of stockholders by Board resolution. Under the Charter and By-Laws and relevant state law, the adoption at the Annual Meeting of such amendments will require: (1) In the case of the Charter amendment, the affirmative vote, cast in person or by proxy, of the holders of at least two-thirds of the outstanding shares of Middle South's common stock ("Common Stock"); (2) in the case of the By-Law amendment, the affirmative vote, cast in person or by proxy, of at least a majority of the outstanding shares of Common Stock; and (3) in both cases, the presence at the Annual Meeting, in person or by proxy, of the holders of at least a majority of the outstanding shares of Common Stock. Middle South proposes to solicit proxies in connection with both of these amendments. The proposed amendments to the Advance Notice By-Laws do not require prior stockholder approval, but will be adopted by the Board to become effective if and when the stockholders approve the related amendment to the By-Laws regarding the date and time of annual meetings.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-3618 Filed 2-15-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1260]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A; Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 9, 1989 at 9:30 a.m. in Room 1912, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The purpose of the meeting will be to: (a) Debrief of relevant Administrative Council meeting.

(b) Debrief of relevant Study Group XVIII meeting issues.

(c) Debrief of CCITT Study Group II issues, and

(d) Development and/or review of contributions to CCITT Study Group:

1. III (April 26-28, 1989).

2. I (May 2-12, 1989).

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl S. Barbely, State Department, Washington, DC; telephone 647-5220. All attendees must use the C Street entrance to the building.

Date: February 6, 1989.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.

[FR Doc. 89-3693 Filed 2-15-89; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1261]

Shipping Coordinating Committee; National Committee for the Prevention of Marine Pollution; Meeting

The National Committee for the Prevention of Marine Pollution (NCPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on March 8, 1989, at 9:30 AM in Room 4315 of U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the twenty-seventh session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) scheduled for March 13-17, 1989. Proposed U.S. positions on MEPC agenda item issues will be discussed.

The major items for discussion will be the following:

1. Consideration to adoption and implementation of Optional Annexes III, IV and V of the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78). There are two principal issues: First, review of the draft revisions to the International Maritime Dangerous Goods (IMDG) Code to implement Annex III (Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Container, Portable Tanks or Road and Rail Tank Wagons) of MARPOL 73/78 including consideration of the target implementation date for the amendments. Second, analysis of problems associated with the

implementation of Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of MARPOL 73/78.

2. Implications of the Harmonized System of Survey and Certification of MARPOL 73/78. Specifically, development of draft amendments to MARPOL 73/78 (pertaining to the harmonized system) to mesh with the amendments to the International Convention for the Safety of Life at Sea and the Convention on Loadlines which were adopted recently at the International Conferences on Maritime Safety.

3. Implementation of Annex I (Regulations for the Prevention of Pollution by Oil) of MARPOL 73/78. Specifically, continuation of the evaluation of the desirability of existing specifications for oily-water separating and filtering equipment.

4. Development of drafts for Section 2—Search and Recovery of Packaged Goods Lost at Sea of the IMO Manual on Chemical Pollution.

5. Enforcement of pollution conventions.

6. Consideration of the possible development of a new "Annex VI" of MARPOL 73/78 covering prevention of pollution by noxious solid substances carried in bulk.

7. Interrelated work of other Committees and Subcommittees.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information or documentation pertaining to the NCPMP meeting, contact either Commander D.B. Pascoe or Lieutenant Commander G.T. Jones, U.S. Coast Guard Headquarters (G-MER-3), 2100 Second Street SW., Washington, DC 20593-0001, Telephone: (202) 267-0419.

February 8, 1989.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 89-3694 Filed 2-15-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes March 27, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10107-N	Beta Power, Inc., Wayne, PA	49 CFR 173.206	To authorize the transportation of solid metallic sodium in a ceramic electrolyte cup containing not more than 15 grams sodium surrounded by a sulfur-carbon fiber composite contained in a mild steel hermetically sealed shell. (Mode 1.)
10108-N	Motorola Inc., Phoenix, AZ	49 CFR 173.245, 173.263, 173.264, 173.266, 173.272, 173.276, 178.19.	To authorize shipment of various oxidizers and corrosive materials authorized for shipment in a DOT Specification 34 drum in a non-DOT drum similar to the DOT Specification 34 drum except that the polyethylene will not be impregnated with an ultraviolet light inhibitor. (Modes 1 and 3.)
10109-N	National Aeronautics and Space Administration, Kennedy Space Center, FL.	49 CFR 173.316	To authorize shipment of air, refrigerated liquid (cryogenic liquid), classed as a nonflammable gas, in a non-DOT Specification double walled stainless steel 3.5 liter liquid air dewar. (Mode 1.)
10110-N	Cylinder Laboratories Inc., Romulus, MI	49 CFR 173.119, 173.302, 173.304, 173.328, 173.34, 173.346.	To authorize the use of a non-DOT Specification stainless steel, 3.7 gallons and 5.7 gallons capacity, salvage cylinder for overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (Mode 1.)
10111-N	Atlantic Steamers Supply Co., Inc., Hoboken, NJ.	49 CFR 173.86, 173.92, 175.3	To authorize shipment of a rocket motor, classed as a Class B explosive, as a Class C explosive packed in a metal ammunition box with plastic bubble pack as cushion. (Modes 1, 2, and 4.)
10112-N	U.S. Chemical & Plastics, Canton, OH	49 CFR 172.400, 173.154	To authorize shipment of Methyl ethyl ketone peroxide solution, classed as an organic peroxide in four tubes placed in a polyethylene bag tied, closed and put down into void in center of four one-gallon containers without labeling. (Modes 1 and 2.)
10113-N	Mount Vernon Mills, Inc., Ware Shoals, SC.	49 CFR 173.245	To authorize transportation of synthetic indigo paste, a corrosive material, in a 4500 gallon rubber sealed tank K linear inside a freight van. (Mode 1.)
10114-N	American Airlines, DFW Airport, TX	49 CFR 175.10, 175.3	To authorize deadheading of up to six oxygen units, to be used for passenger medical service, in the passenger cabin of an airplane. (Mode 5.)
10115-N	Atlas Powder Co., Dallas, TX	49 CFR 173.93(e), 175.30	To authorize shipment of a liquid propellant explosive, classed as a Class B explosive in DOT Specification 6D or 6J drums with a DOT Specification 2S PE liner. (Modes 1, 2, 3, and 4.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10116-N	Western Atlas International, Inc., Houston, TX.	49 CFR 173.102(a)(1), 175.3.....	To authorize shipping of an explosive power device, Class C, in DOT Specification 12B fiberboard box. (Modes 1, 3, 4, and 5.)
10117-N	Blackman Uhler Chemical Division, Augusta, GA.	49 CFR 173.365.....	To authorize shipment of Dinitrochlorobenzene, classed as a Poison B, in a DOT Specification MC 307 stainless steel cargo tank, insulated and equipped with heating coils to keep material temperature above 113 degrees F. (Mode 1.)
10118-N	El Dorado Chemical Co., St. Louis, MO.....	49 CFR 173.268, 179.201-1.....	To authorize transportation of nitric acid (over 40%), classed as an oxidizer in 103A-ALW equipped with relief valves with start-to-discharge pressure of 45 pounds. (Mode 2.)
10119-N	Crow Executive Air Charter, Inc., Millbury, OH.	49 CFR 172.101, 173.54, 175.30.....	To authorize transport of certain Class A, B, and C explosives by cargo air which are forbidden for shipment by air or exceed authorized quantity limitation prescribed for air shipment. (Mode 4.)
10120-N	American Cyanamid Company/Agricultural Division, Wayne, NJ..	49 CFR 173.377(a).....	To authorize transportation of an organic phosphate compound mixture, not exceeding 27 percent in an inert dry material, classed as an organic phosphate in a non-DOT specification plastic container with a plastic valve dispensing closure. (Mode 1.)
10121-N	Union Pacific Railroad Co., Omaha, NE.....	49 CFR 173.32c(f).....	To authorize filling of 1M portable tanks or compartments thereof having a volume greater than 1900 gallons to be loaded to a filling density less than 60% by volume. (Modes 1 and 2.)
10122-N	Atochem, 92091 Paris, France.....	49 CFR 173.119(b), 173.21(b), 175.30(a)...	To authorize air shipment of a flammable liquid, n.o.s., classed as a flammable liquid, in stainless steel containers, designed to resist pressures up to 15 bars, with a capacity of 5, 30, and 50 liters filled to 50% of capacity. (Mode 4.)
10123-N	Swiss Aluminum Ltd., Zurich, Switzerland..	49 CFR 173.302, 173.304, 173.305, 175.3, 178.46.	To manufacture, mark, and sell a non-DOT specification FRP cylinder similar to the DOT specification 3AL cylinder for shipment of flammable and non-flammable gases. (Mode 1.)
10124-N	Arrowhead Industrial Services, Inc., West Orange, NJ.	49 CFR 175.3, 178.45.....	To manufacture mark and sell non-DOT specification steel cylinders similar to DOT specification 3T except one end is not concaved to pressure and water capacity below 100 pounds with service pressures from 1600 psi to 2265 psi for shipment of those gases authorized in DOT-3AA and 3T cylinders. (Modes 1, 2, 3 and 4.)
10125-N	Flexible Products Co., Marietta, GA.....	49 CFR 173.315, 174.63.....	To authorize shipment of mixtures of nonpoisonous and non-flammable compressed gases, classed as nonflammable gas, in non-DOT specification cargo tanks and portable tanks similar to the MC-331 Cargo tank and DOT specification 51 portable tank respectively. (Modes 1 and 2.)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1989.

J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of
Hazardous Materials Transportation.

[FR Doc. 89-3673 Filed 2-15-89; 8:45 am]

BILLING CODE 4910-80-M

**Office of Hazardous Materials
Transportation; Applications for
Renewal or Modification of
Exemptions or Applications to
Become a Party to an Exemption**

AGENCY: Research and Special Programs
Administration, DOT.

ACTION: List of applications for renewal
or modification of exemptions or

application to become a party to an
exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.)

they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes March 3, 1989.

ADDRESS COMMENTS TO: Dockets
Branch, Research and Special Programs
Administration, U.S. Department of
Transportation, Washington, DC 20590.

Comments should refer to the
application number and be submitted in
triplicate.

FOR FURTHER INFORMATION:
Copies of the applications are available
for inspection in the Dockets Branch,
Room 8426, Nassif Building, 400 7th
Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
3109-X	Raytheon Company, Lowell MA	3109
3109-X	General Dynamics Corporation, East Camden, AR	3109
3109-X	HR Textron Inc.—Fuel/Pneumatics Division, Pacoima, CA	3109
4453-X	Energy Ventures Corp. dba Columbus Powder Company, Columbus, IN	4453
4719-X	Halocarbon Products Corporation, North Augusta, SC	4719
4719-X	Dow Chemical U.S.A., Freeport, TX	4719
4884-X	Solkatronic Chemicals, Inc., Fairfield, NJ	4884
4884-X	Union Carbide Corporation, Danbury, CT	4884
5022-X	Aerojet Solid Propulsion Company, Sacramento, CA	5022
5206-X	Nelson Brothers, Inc., Parish, AL	5206
5749-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE (See Footnote 1)	5749
6232-X	U.S. Department of Defense, Washington, DC	6232
6232-X	McDonnell Douglas Corporation, Saint Louis, MO	6232
6472-X	Morton Thiokol, Incorporated, Brigham City, UT (See Footnote 2)	6472
6538-X	Optimus, Inc., Bridgeport, CT (See Footnote 3)	6538
6557-X	U.S. Department of Defense, Falls Church, VA	6557
6557-X	General Fire Extinguisher Corporation, Northbrook, IL	6557
6583-X	Phillips Petroleum Company, Bartlesville, OK	6583
6610-X	ARCO Chemical Company, Newtown Square, PA (See Footnote 4)	6610
6614-X	Bison Laboratories, Inc., Buffalo, NY	6614
6614-X	GPS Industries, City of Industry, CA	6614
6614-X	All Pure Chemical Company, Tracy, CA	6614
6626-X	Messer Griesheim Industries, Inc., Valley Forge, PA	6626
6658-X	U.S. Department of Energy, Washington, DC	6658
6658-X	U.S. Department of Defense, Falls Church, VA	6658
6752-X	ATOChem, Inc., Paris, France	6752
7007-X	Allied Universal Corporation, Miami, FL	7007
7052-X	Mercury Instruments, Inc., Cincinnati, OH	7052
7063-X	Twin Lake Chemical Company, Lockport, NY	7063
7071-X	Clayton Chemical Company, Los Angeles, CA	7071
7071-X	Olin Hunt Specialty Products Corporation, West Paterson, NJ	7071
7252-X	Explosives Technologies International, Wilmington, DE	7252
7286-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	7286
7489-X	Micor Company, Inc., Milwaukee, WI (See Footnote 5)	7489
7526-X	Sherex Chemical Company, Inc., Dublin, OH	7526
7526-X	Schering AG, West Berlin, West Germany	7526
7605-X	General Dynamics/Fort Worth Division, Fort Worth, TX	7605
7605-X	U.S. Department of Defense, Falls Church, VA	7605
7616-X	CSX Transportation, Inc., Jacksonville, FL	7616
7616-X	Southern Pacific Transportation Company, San Francisco, CA	7616
7616-X	Kansas City Southern Railway Co. and Subsidiaries, Kansas City, MO	7616
7616-X	Atchison, Topeka and Santa Fe Railway Company, Chicago, IL	7616
7616-X	Norfolk Southern Corporation, Norfolk, VA	7616
7616-X	Chicago & Northwestern Transportation Co., Chicago, IL	7616
7769-X	Brunswick Corporation/Defense Division, Lincoln, NE	7769
7777-X	Lang Engineering Company, Inc., Rochester, WI	7777
7835-X	Air Products and Chemicals, Inc., Allentown, PA	7835
7835-X	Solkatronic Chemicals, Inc., Fairfield, NJ	7835
7835-X	Scott Specialty Gases, Plumsteadville, PA	7835
7835-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL	7835
7835-X	Matheson Gas Products, Inc., Secaucus, NJ	7835
7835-X	American Welding Supply, San Jose, CA	7835
7879-X	Gearhart Industries, Inc., Fort Worth, TX	7879
7943-X	Chem Lab Products, Inc., Ontario, CA	7943
8096-X	Amtrol, Inc., West Warwick, RI	8096
8168-X	Container Corporation of America/Plastics Division, Wilmington, DE	8168
8184-X	Trojan Corporation, Spanish Fork, UT	8184
8196-X	Eurotainer, USA Inc., 75008 Paris, France	8196
8214-X	Morton Thiokol, Incorporated, Ogden, UT	8214
8214-X	Mercedes-Benz of North America, Inc., Montvale, NJ	8214
8214-X	Chrysler Motors Corporation, Center Line, MI	8214
8220-X	Applied Companies, San Fernando, CA	8220
8221-X	Applied Companies, San Fernando, CA	8221
8232-X	Eurotainer, US Inc., 75008 Paris, France	8232
8445-X	Drug & Laboratory Disposal, Inc., Plainwell, MI	8445
8487-X	Brunswick Corporation/Defense Division, Lincoln, NE	8487
8510-X	The Dow Chemical Company, Freeport, TX	8510
8540-X	U.S. Department of Defense, Falls Church, VA	8540
8547-X	Natico, Inc., Chicago, IL	8547
8569-X	U.S. Department of Defense, Falls Church, VA	8569
8609-X	Natico, Inc., Chicago, IL	8609
8614-X	Arrowhead Airways, Inc., Minneapolis, MN	8614
8693-X	CANTRO, Inc., Olathe, KS	8693
8815-X	Nelson Brothers, Inc., Parrish, AL	8815
8901-X	Hopkins Agricultural Chemical Company, Madison, WI	8901
8936-X	Great Lakes Chemical Corporation, El Dorado, AR	8936
8958-X	De La Mare Engineering, Inc., San Fernando, CA	8958
8966-X	GPS Industries, City of Industry, CA	8966
8966-X	All Pure Chemical Company, Inc., Tracy, CA	8966

Application No.	Applicant	Renewal of exemption
8966-X	GPS Industries, City of Industry, CA (See Footnote 6)	8966
8990-X	Amtrol, Inc., West Warwick, RI	8990
9010-X	United Technologies, Chemical Systems Division, San Jose, CA	9010
9017-X	EVA Eisenbahn-Verkehrsmittel-Gesellschaft GmbH, Dusseldorf, West Germany	9017
9063-X	Hoechst Celanese Corporation, Somerville, NJ	9063
9108-X	Trojan Corporation, Spanish Fork, UT	9108
9108-X	Atlas Powder Company, Dallas, TX	9108
9120-X	Western Atlas International, Inc., Houston, TX	9120
9271-X	CSX Transportation, Inc., Jacksonville, FL	9271
9275-X	International Flavors & Fragrances (IFF-US), Hazlet, NJ	9275
9326-X	Carbonaire, Inc., Palmerton, PA	9326
9338-X	Allied-Signal Inc., Morristown, NJ	9338
9431-X	U.S. Department of Defense, Falls Church, VA	9431
9463-X	Guzzler Manufacturing, Inc., Birmingham, AL	9463
9480-X	Messer Griesheim Industries, Inc., Valley Forge, PA	9480
9491-X	Messer Griesheim Industries, Inc., Valley Forge, PA	9491
9579-X	IRECO, Incorporated Salt Lake City, UT	9579
9672-X	Ethyl Corporation, Baton Rouge, LA	9672
9677-X	Allied Universal Corporation, Miami, FL	9677
9683-X	Meter Engineers, Inc., Wichita, KS	9683
9696-X	Fluoroware, Inc., Chaska, MN	9696
9707-X	Pepsi-Cola Company, Somers, NY (See Footnote 7)	9707
9711-X	Konica Business Machines U.S.A., Inc., Windsor, CT	9711
9711-X	Konica U.S.A., Inc., Englewood Cliffs, NJ	9711
9718-X	Eurotainer, U.S. Inc., 75008 Paris, France	9718
9761-X	Syston Donner, Safety Systems Division, Concord, CA (See Footnote 8)	9761
9833-X	Wacker-Chemie GmbH, Munich 22, West Germany, CT	9833
10081-X	Morton Thiokol, Inc.-Aerospace Group, Brigham City, UT	10081
10106-X	Dynalmit Nobel Special Chemistry, Troisdorf, West Germany (See Footnote 9)	10106

(1) To authorize use of smaller outside dimension valves: To authorize use of new bolts-studs that have lower temperature properties: and removable fiberglass panel.

(2) To authorize the additional wire bound box with fiberboard lining.

(3) To authorize metal containers filled with Butane, Butane-Propane mixtures to have a pressure of 125 psig instead of 100 psig and to be offered as or consumed commodity.

(4) To authorize an additional bulk type container.

(5) To authorize the addition of transportation via cargo aircraft.

(6) To eliminate the requirement that the polyethylene bottles be enclosed in an inside polyethylene bag.

(7) To authorize additional products and packaging configurations; request modification of placarding and shipping paper requirements and to add cargo vessel as additional mode of transportation.

(8) To authorize an increase of nominal water capacity from 75 cubic inches to 224 cubic inches (nominal).

(9) To renew exemption issued on an emergency basis to authorize transport of tetrazole-1-acetic acid in fiber drums.

Application No.	Applicant	Parties to exemption
970-P	Voltaix, Inc., Branchburg, NJ	970
2000-P	Linde Gases of the South, Inc., Houston, TX	2000
2582-P	Linde Gases of the South, Inc., Houston, TX	2582
2582-P	Mobil Chemical Company, Stamford, CT	2582
3004-P	Linde Gases of the South, Inc., Houston, TX	3004
4453-P	SherDeb Corporation, Lehigh Valley, PA	4453
4453-P	Reed Explosives, Inc., Blountsville, AL	4453
4575-P	Linde Gases of the South, Inc., Houston, TX	4575
4884-P	Linde Gases of the South, Inc., Houston, TX	4884
4884-P	Matheson Gas Products, Secaucus, NJ	4884
5206-P	Atlas Powder Company, Dallas, TX	5206
5206-P	Geenen Explosives, Inc., Kaukauna, WI	5206
5923-P	Linde Gases of the South, Inc., Houston, TX	5923
6293-P	Atlas Powder Company, Dallas, TX	6293
6530-P	Linde Gases of the South, Inc., Houston, TX	6530
6543-P	Linde Gases of the South, Inc., Houston, TX	6543
6691-P	Linde Gases of the South, Inc., Houston, TX	6691
6805-P	Linde Gases of the South, Inc., Houston, TX	6805
7268-P	Linde Gases of the South, Inc., Houston, TX	7268
7274-P	Linde Gases of the South, Inc., Houston, TX	7274
7451-P	Linde Gases of the South, Inc., Houston, TX	7451
7607-P	Camp, Dresser and McKee, Chantilly, VA	7607
7648-P	Blue & Gold Aviation Services, Brigham City, UT	7648
7648-P	Sunwest Aviation, Ogden, UT	7648
7768-P	Hewlett Packard Company, Loveland, CO	7768
7803-P	Hewlett Packard Company, Loveland, CO	7803
7823-P	Marubeni America Corporation, New York, NY	7823
7835-P	Linde Gases of the South, Inc., Houston, TX	7835
7835-P	Industrial Gas Products and Supply, Inc., Colorado Springs, CO	7835
7846-P	Linde Gases of the South, Inc., Houston, TX	7846
7879-P	Halliburton Logging Services, Inc., Fort Worth, TX	7879
7954-P	Jack B. Kelley, Inc., Amarillo, TX	7954
8013-P	Linde Gases of the South, Inc., Houston, TX	8013

Application No.	Applicant	Parties to exemption
8091-P	AT&T Information Systems Inc., Greensboro, NC	8091
8151-P	The Epoxylite Corporation, Irvine, CA	8151
8156-P	Linde Gases of the South, Inc., Houston, TX	8156
8214-P	Saab-Scania of America, Inc., Orange, CT	8214
8445-P	E&K Hazardous Waste Services, Inc., Sheboygan, WI	8445
8451-P	Olin Ordnance Corporation, Marion, IL	8451
8518-P	Unocal Oil & Gas Division, Ventura, CA	8518
8554-P	SherDeb Corporation, Lehigh Valley, PA	8554
8556-P	Linde Gases of the South, Inc., Houston, TX	8556
8582-P	Iowa Interstate Railroad, Ltd., Iowa City, IA	8582
8723-P	SherDeb Corporation, Lehigh Valley, PA	8723
8862-P	Linde Gases of the South, Inc., Houston, TX	8862
8915-P	Linde Gases of the South, Inc., Houston, TX	8915
9034-P	Linde Gases of the South, Inc., Houston, TX	9034
9047-P	Linde Gases of the South, Inc., Houston, TX	9047
9052-P	Hewlett Packard, Loveland, CO	9052
9059-P	U.S. Department of Defense, Falls Church, VA	9059
9059-P	Cryogenic Rare Gas Laboratories Inc., Hanahan, SC	9059
9066-P	Arvin/Calspan, Buffalo, NY	9066
9414-P	Linde Gases of the South, Inc., Houston, TX	9414
9507-P	Linde Gases of the South, Inc., Houston, TX	9507
9579-P	Pepin-Ireco, Inc., Ishpeming, MI	9579
9610-P	E.I. du Pont de Nemours & Company, Wilmington, DE	9610
9610-P	Remington Arms Company, Inc., Lenoire, AR	9610
9723-P	GSX Services, Inc., Columbia, SC	9723
9746-P	Airco/BOC, Murray Hill, NJ	9746
9946-P	Linde Gases of the South, Inc., Houston, TX	9946
9946-P	Linde Gases of the Great Lakes, Inc., Cleveland, OH	9946
9946-P	Unigas, Inc., Ponce, PR	9946
9946-P	Linde Puerto Rico Inc., GURABO, PR	9946
10006-P	Arco Products Company, South Gate, CA	10006
10032-P	Eurotainer, Paris, France	10032
10121-P	Union Pacific's BulkTainer, Omaha, NE	10121
10125-P	Insta-Foam Products, Inc., Joliet, IL	10125

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 13, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-3674 Filed 2-15-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-27]

Recordation of Trade Name: "Duart Industries, LTD."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Recordation.

SUMMARY: On October 13, 1988, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "DUART INDUSTRIES, Ltd." was published in the Federal Register (53 FR 40163). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than December 12, 1988. No responses were received in

opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "DUART INDUSTRIES, LTD." is recorded as the trade name used by Duart Industries, Ltd., a corporation organized under the laws of the State of California, located at 984 Folsom Street, San Francisco, California 94107. The trade name is used in connection with wholesale and retail hair conditioners and shampoos manufactured in California.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT:

Velma Taylor, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: February 13, 1989.

Marvin M. Amernick,
Chief, Value, Special Programs and
Admissibility Branch.

[FR Doc. 89-3631 Filed 2-15-89; 8:45 am]

BILLING CODE 4920-02-M

Internal Revenue Service

Performance Review Board; Membership

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective February 1, 1989.

FOR FURTHER INFORMATION CONTACT:

DiAnn Kiebler, HR:H-E, Room 3515, 1111 Constitution Avenue NW., Washington, DC 20224, Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review

Board for senior executives other than Regional Commissioners, Assistant Commissioners and executives in Inspection and the Office of the Commissioner are as follows:

Michael J. Murphy, Senior Deputy
Commissioner, Chairperson

Michael P. Dolan, Assistant
Commissioner (Human Resources
Management and Support)

Robert I. Brauer, Assistant
Commissioner (Employee Plans and
Exempt Organizations)

Richard C. Voskuil, Regional
Commissioner, Southwest Region

Cornelius J. Coleman, Regional
Commissioner, North Atlantic Region

Daniel N. Capozzoli, Assistant
Commissioner (Computer Services),
Alternate

J. Robert Starkey, Regional
Commissioner, Mid-Atlantic Region,
Alternate

This document does not meet the
criteria for significant regulations set
forth in paragraph 8 of the Treasury
Directive appearing in the **Federal
Register** for Wednesday, November 8,
1978 (43 FR 52122).

Lawrence B. Gibbs,
Commissioner.

[FR Doc. 89-3652 Filed 2-15-89; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 31

Thursday, February 16, 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).

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, No. 25 / Wednesday, February 8, 1989 / 6231.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, February 14, 1989.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item three (Aviation Accident Data Review: General Aviation Accidents Involving Visual Flight Rules Flight Into Instrument Meteorological Conditions) has been adopted and taken off the agenda.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382-6525.

Bea Hardesty,
Federal Register Liaison Officer.
February 13, 1989.

[FR Doc. 89-3696 Filed 2-14-89; 9:44 am]

BILLING CODE 7533-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the

Securities and Exchange Commission will hold the following meetings during the week of February 20, 1989.

A closed meeting will be held on Tuesday, February 21, 1989, at 2:30 p.m. Open meeting will be held on Wednesday, February 22, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 21, 1989, at 2:30 p.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Order compelling testimony.
- Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, February 22, 1989, at 10:00 a.m., will be:

1. Consideration of whether to propose for comment an amendment to the Commission's customer protection rule. Under the proposal,

Rule 15c3-3 under the Securities Exchange Act of 1934 will be amended to allow broker-dealers to pledge certain "government securities" as collateral in government securities borrowings. For further information, please contact Michael A. Macchiaroli at (202) 272-2904.

2. Consideration of an application filed by Thomas J. Herzfeld Advisors (Canada), Inc. on behalf of T. J. Herzfeld Discount Asset fund ("Fund") for an order of the Commission under section 6(c) of the Investment Company Act of 1940 conditionally exempting it from the provisions of Section 12(d)(1)(A) to permit the Fund, an unregistered Canadian closed-end fund holding company, to invest in the securities of United States registered closed-end investment companies. For further information, please contact Victor R. Siclari at (202) 272-3026.

3. Consideration of whether to adopt amendments to Form 8-K and Regulation S-K to: accelerate the timing for filing Forms 8-K relating to changes in accountants and resignations of directors, reduce the time period when there is a change in accountants for filing with the Commission a letter from the former accountant, and permit the former accountant to file an interim letter. For further information, please contact Robert Burns at (202) 272-2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272-2100.

Jonathan G. Katz,
Secretary.

February 10, 1989.

[FR Doc. 89-3759 Filed 2-14-89; 11:48 am]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 54, No. 31

Thursday, February 16, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 85N-0053]

Additional Standards for Viral Vaccines; Measles Virus Vaccine Live, Mumps Virus Vaccine Live, and Measles Live and Smallpox Vaccine

Correction

In proposed rule document 89-2566 beginning on page 5497 in the issue of Friday, February 3, 1989, make the following correction:

§ 630.55 [Corrected]

On page 5499, in the third column, in § 630.55(a)(4), in the eighth line, "virus" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89E-0009]

Determination of Regulatory Review Period for Purposes of Patent Extension; Voltaren®

Correction

In notice document 89-2569 appearing on page 5550 in the issue of Friday, February 3, 1989, make the following correction:

In the third column, in the fourth line, after "1984.)", insert "Petitions should be in the format specified in 21 CFR 10.30."

BILLING CODE 1505-01-D

Estuarine Federal Register

Thursday
February 16, 1989

Part II

National Science Foundation

45 CFR Part 670

Conservation of Antarctic Animals and
Plants; Enforcement and Hearing
Procedures; Tourism Guidelines; Final
Rule

NATIONAL SCIENCE FOUNDATION**45 CFR Part 670****Conservation of Antarctic Animals and Plants; Enforcement and Hearing Procedures; Tourism Guidelines****AGENCY:** National Science Foundation.**ACTION:** Final rule.

SUMMARY: The National Science Foundation (NSF) is issuing final regulations governing the administrative handling of alleged violations of the Antarctic Conservation Act of 1978. The regulations cover the full range of procedural requirements for civil enforcement actions initiated by NSF against those who contravene the mandates of the Antarctic Conservation Act.

Subjects covered include, but are not limited to, complaint procedures, notice and opportunity for response, pre-hearing activities and motion practice, adjudicatory hearing procedures, standards of proof, penalty assessments, permit revocations, settlement, and appeal. Responsibilities of various units within NSF are also set out in detail.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, Deputy General Counsel, National Science Foundation, Office of the General Counsel, Room 501, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-9435. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Director of the National Science Foundation is responsible for enforcing various conservation and environmental protection provisions in the Antarctic Conservation Act of 1978, 16 U.S.C. Sections 2401 et seq. That statute prohibits certain acts by United States citizens in the Antarctic, such as killing, trapping, harming, or harassing protected animal species, or discharging pollutants, without a valid NSF permit. Violators of the Act are subject to civil penalty actions initiated by NSF and to possible criminal proceedings as well.

Until recently, few violations of the Act occurred, due to the remoteness of the Antarctic region and the relatively small number of scientists and visitors there. NSF informally handled these instances of non-compliance.

The past five years have witnessed a dramatic rise in tourism in the Antarctic, expanded scientific research throughout the Continent, and increased operational activity at United States stations. As a result, NSF is establishing formal enforcement and hearing procedures designed to insure the fair and efficient handling of administrative

complaints that charge individuals with violations of the Act. Effective handling of administrative cases will deter environmental and conservation violations, preserve opportunities for scientific research, and demonstrate the Foundation's continuing commitment to its environmental obligations and to international leadership in the Antarctic community.

Analysis of Comments

NSF published proposed regulations in the Federal Register on November 8, 1988 (53 FR 45199) and requested public comment. The comment period ended on January 2, 1989. NSF received comments from the United States Environmental Protection Agency which gave unqualified support for this regulatory effort. No other comments were received. However, before the proposed regulations were formulated, NSF conducted a public hearing to aid the Foundation in its deliberations concerning the scope of the hearing and enforcement regulations and possible Antarctic tourism guidelines. Members of the public, scientists who perform research in the Antarctic, naturalists, environmentalists, lawyers, and representatives of the tourism industry attended the public hearing and commented for the record. Those comments were considered in drafting the regulations before they were published as a proposed rule in the Federal Register. Since the only public comment on the proposed rule did not suggest any changes or revisions, these regulations are being published without modification as a final rule. One additional sentence at 45 CFR 670.52(i), however, has been added.

Determinations

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

I also certify that this regulation will not have a significant economic impact on a substantial number of small entities because the rules primarily affect the internal procedures of a Federal Agency.

List of Subjects in 45 CFR Part 670

Administrative practice and procedure, Conservation of Antarctic animals and plants, Enforcement and hearing procedures.

For the reasons set out in the preamble, the National Science Foundation hereby amends Part 670 of Title 45, Subtitle B, Chapter VI of the Code of Federal Regulations by adding Subpart K as set forth below.

Dated: January 23, 1989.

Robert M. Andersen,*Deputy General Counsel, National Science Foundation.***PART 670—[AMENDED]**

Subpart K is added to read as follows:

Subpart K—Enforcement and Hearing Procedures; Tourism Guidelines

Sec.

- 670.50 Hearing Procedures—Scope of these rules.
- 670.51 Definitions.
- 670.52 Powers and duties of the Director; Presiding Official; Division of Polar Programs.
- 670.53 Filing, service, and form of pleadings and documents.
- 670.54 Filing and service of rulings, orders, and decisions.
- 670.55 Appearances.
- 670.56 Issuance of complaint.
- 670.57 Answer to the complaint.
- 670.58 Motions.
- 670.59 Default order.
- 670.60 Informal settlement; consent agreement and order.
- 670.61 Prehearing conference.
- 670.62 Accelerated decision; decision to dismiss.
- 670.63 Scheduling the hearing.
- 670.64 Evidence.
- 670.65 Objections and offers of proof.
- 670.66 Burden of presentation; burden of persuasion.
- 670.67 Filing the transcript.
- 670.68 Proposed findings, conclusions, and order.
- 670.69 Initial decision.
- 670.70 Appeal from or review of interlocutory orders or rulings.
- 670.71 Appeal from or review of initial decision.
- 670.72 Final order on appeal.

Subpart K—Enforcement and Hearing Procedures; Tourism Guidelines

Authority: The Antarctic Conservation Act of 1978, 16 U.S.C. 2409(f); 2405; 2401–2412; The National Science Foundation Act, 42 U.S.C. 1861 et seq.

§ 670.50 Hearing procedures—Scope of these rules.

(a) These hearing rules govern all adjudicatory proceedings for the assessment of civil penalties or imposition of other sanctions pursuant to the Antarctic Conservation Act of 1978, 16 U.S.C. 2407; 2404(f); 2401–2412; and

(b) Other adjudicatory proceedings that the Foundation, in its discretion, determines are appropriate for handling under these rules, including proceedings governed by the Administrative Procedure Act requirements for "hearings on the record." 5 U.S.C. 554 (1982).

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Director or Presiding Officer.

§ 670.51 Definitions.

(a) Throughout these rules, words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa.

(b) "Act" means the particular statute authorizing the initiation of the proceeding.

(c) "Administrative Law Judge" means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183).

(d) "Complainant" means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the Presiding Officer or any other person who will participate or advise in the decision.

(e) "Complaint" means a written communication, alleging one or more violations of specific provisions of the Act, Treaties, NSF regulations or a permit promulgated thereunder, issued by the complainant to a person under this subpart.

(f) "Consent Agreement" means any written document, signed by the parties, containing stipulations or conclusions of fact or law, and a proposed penalty, revocation or suspension of a permit, or other sanction.

(g) "Director" means the Director of the National Science Foundation (NSF) or his delegatee.

(h) "Final Order" means (1) an order issued by the Director after an appeal of an initial decision, accelerated decision, a decision to dismiss, or default order, or (2) an initial decision which becomes a final order.

(i) "Foundation," "Agency," or "NSF" means the National Science Foundation.

(j) "Hearing" means a hearing on the record open to the public and conducted under these rules.

(k) "Hearing Clerk" is the person with whom all pleadings, motions, and other documents required under this subpart are filed.

(l) "Initial Decision" means the decision issued by the Presiding Officer based upon the official record of the proceedings.

(m) "Party" means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) "Permit" means a permit issued under section 5 of the Antarctic Conservation Act of 1978, 16 U.S.C. section 2404.

(o) "Person" includes any individual, partnership, association, corporation,

and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) "Presiding Officer" means the attorney designated by the Director to conduct hearings or other proceedings under this subpart.

(q) "Respondent" means any person proceeded against in the complaint.

(r) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

§ 670.52 Powers and duties of the Director; Presiding Officer; Division of Polar Programs.

(a) *Director.* The Director of NSF shall exercise all powers and duties as prescribed or delegated under the Act and these rules.

(b) The Director may delegate all or part of his authority. Partial delegation does not prevent the Presiding Officer from referring any motion or case to the Director.

(c) *Presiding Officer.* The Director may designate one or more Presiding Officers to perform the functions described below. The Presiding Officers shall be attorneys who are permanent or temporary employees of the Foundation or some other Federal Agency and may perform other duties compatible with their authority as hearing officers. Administrative Law Judges may perform the functions of Presiding Officers. The Presiding Officer shall have performed no prosecutorial or investigatory functions in connection with any matter related to the hearing.

(d) The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

- (1) Conduct administrative hearings under these rules of practice;
- (2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Examine witnesses and receive documentary or other evidence;
- (5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of facts, law or discretion;

(9) Issue subpoenas authorized by the Act; and

(10) Take all actions necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(e) *Disqualification; Withdrawal.* (1) The Presiding Officer may not participate in any matter in which he (i) has a financial interest or (ii) has any relationship with a party or with the subject matter which would make it inappropriate for him to act. Any party may at any time by motion made to the Director, or his delegatee, request that the Presiding Officer be disqualified from the proceeding.

(2) If the Presiding Officer is disqualified or withdraws from the proceeding, the Director shall assign a qualified replacement who has none of the infirmities listed in paragraph (e)(1) of this section. The Director, should he withdraw or disqualify himself, shall assign the Deputy Director to be his replacement.

(f) *Division of Polar Programs.* The Division of Polar Programs (DPP) manages and operates the national program in Antarctica, including administration of the Antarctic Conservation Act (ACA) permit system. DPP is responsible for investigating alleged violations of the "prohibited acts" section of the ACA and alleged noncompliance with ACA permits. DPP will act as the official complainant in all proceedings under the ACA governed by these rules. DPP may delegate all or part of its investigatory duties to other appropriate NSF employees, other qualified federal employees, or consultants. DPP will prepare complaints with the assistance of designated prosecuting attorneys within NSF's Office of General Counsel, other qualified federal attorneys, or other appropriate legal representative selected jointly by DPP and OGC. The designated prosecuting attorney will represent DPP in all proceedings governed by these rules.

(g) The Division of Polar Programs, acting on behalf of the Director, may designate qualified individuals as enforcement officers empowered to execute all of the law enforcement functions set forth in section 10 of the ACA, 16 U.S.C. 2409, as well as any other appropriate actions ancillary to

those statutory duties. DPP will provide each enforcement officer with official enforcement credentials for identification purposes and use during execution of official duties.

DPP may also designate knowledgeable individuals to provide educational and other information regarding the Antarctic to tour operators, their clients and employees, and other visitors to the Antarctic.

(h) The Division of Polar Programs shall prepare for publication and distribution a clear, concise explanation of the prohibited acts set forth in the Antarctic Conservation Act, and other appropriate educational material. The explanation may be translated into Spanish, French, German, or other foreign languages. This material shall be provided to tour operators for distribution to their passengers and crew prior to or during travel to the Antarctic. Tour operators shall distribute provided materials to each passenger and crew member.

(i) The Office of General Counsel, with the concurrence of the Division of Polar Programs, may refer appropriate cases to the Department of Justice for possible prosecution of criminal violations of the Antarctic Conservation Act.

§ 670.53 Filing, service, and form of pleadings and documents.

(a) Filing of pleadings and documents.

(1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding, shall be filed with the Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, he shall file the original of the correspondence with the Hearing Clerk, maintain a copy in the duplicate file, and send a copy to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) Service of pleadings and documents—(1) Service of complaint. (i) Service of a copy of the signed original

of the complaint, together with a copy of these rules, may be made personally or by certified mail, return receipt requested, on the respondent or his representative.

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof; or

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing it or by his representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk, Presiding

Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

§ 670.54 Filing and service of rulings, orders, and decisions.

(a) All rulings, orders, decisions, and other documents issued by the Presiding Officer shall be filed with the Hearing Clerk. Copies of all such documents shall be served personally, or by certified mail, return receipt requested, upon all parties.

(b) *Computation.* In computing any period of time prescribed or allowed in these rules, except as otherwise provided, computation is by calendar days and does not include the day of the event from which the designated period begins to run. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(c) *Extensions of time.* The Presiding Officer may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(d) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.

(e) *Ex parte discussion of proceeding.* At no time after the issuance of the complaint shall the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or other factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Presiding Officer

during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The Presiding Officer shall give the other parties an opportunity to reply.

(f) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Hearing Clerk.

(g) The person seeking copies of any documents filed in a proceeding shall bear the cost of duplication. Upon a formal request the Agency may waive this cost in appropriate cases.

§ 670.55 Appearances.

(a) *Appearances.* Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

(b) *Intervention.* A motion for leave to intervene in any proceeding conducted under these rules must set forth the grounds for the proposed intervention, the position and interest of the movant, and whether the intervention will cause delay. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(c) A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference, or if there is no such conference, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (b) of this section, a statement of good cause for the failure to file in a timely manner. Agreements, arrangements, and other matters previously resolved during the proceeding are binding on the intervenor.

(d) *Disposition.* The Presiding Officer may grant leave to intervene only if the movant demonstrates that (1) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (2) the movant will be adversely affected by a final order; and (3) the interests of the movant are not being adequately represented by the

original parties. The intervenor becomes a full party to the proceeding upon the granting of leave to intervene.

(e) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Director shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, motions, and orders relating to issues to be briefed.

(f) *Consolidation.* The Presiding Officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules where (1) there exists common parties or common questions of fact or law; (2) consolidation would expedite and simplify consideration of the issues; and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(g) *Severance.* The Presiding Officer may, by motion or sua sponte, for good cause shown order any proceedings severed with respect to any or all parties or issues.

§ 670.56 Issuance of complaint.

(a) *General.* If the complainant has reason to believe that a person has violated any provision of the Antarctic Conservation Act, other Act or attendant regulations, or a permit issued under the ACA, he may institute a proceeding for the assessment of a civil penalty or other sanctions by issuing a complaint under the Act and these rules.

(b) If the complainant has reason to believe that (1) a permittee violated any term or condition of the permit, or (2) a permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the permit application, or (3) other good cause exists for such action, he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the Act and these rules. A complaint may seek suspension or revocation of a permit in addition to the assessment of a civil penalty.

(c) *Content and amendment of the complaint.* All complaints shall include: (1) A statement reciting the section(s) of the Act, regulations, and/or permit authorizing the issuance of the complaint;

(2) A concise statement of the factual basis for all alleged violations; and

(3) Notice of the respondent's right to request a hearing on any material fact

contained in the complaint, or on the appropriateness of the proposed sanction.

(d) Each complaint for the assessment of a civil penalty shall also include:

(1) Specific reference to each provision of the Act and implementing regulations which respondent is alleged to have violated;

(2) The amount of the civil penalty which is proposed to be assessed; and

(3) A statement explaining the reasoning behind the proposed penalty;

(e) Each complaint for the revocation or suspension of a permit shall also include:

(1) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(2) A request for an order to either revoke or suspend the permit and a statement of the terms and conditions of any proposed partial suspension or revocation; and

(3) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa.

A copy of these rules shall accompany each complaint served.

(f) *Derivation of proposed civil penalty.* The complainant shall determine the dollar amount of the proposed civil penalty in accordance with any criteria set forth in the Act and with any civil penalty guidance issued by NSF.

(g) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file his answer.

(h) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer.

(i) Complainant, in cooperation with the Office of General Counsel, may refer cases to the Department of Justice for

possible criminal prosecution if there is reason to believe that respondent willfully violated the Antarctic Conservation Act or its attendant regulations. Such referral does not automatically preclude NSF from proceeding administratively under the Act and these rules against the same respondent.

§ 670.57 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the Hearing Clerk. Any such answer to the complaint must be filed with the Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint. If respondent asserts he has no knowledge of a particular factual allegation, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which respondent intends to place at issue; and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. The Presiding Officer may deem the right to a hearing waived if it is not requested by respondent. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, to examine issues raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 670.58 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the basis or grounds with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, or other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party must file a response to any written motion

within ten (10) days after service of such motion, unless the Presiding Officer allows additional time. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the Presiding Officer may deem the parties to have waived any objection to the granting of the motion. The Presiding Officer may also set a shorter time for response, or make such other appropriate orders concerning the disposition of motions.

(c) *Ruling on Motions.* The Presiding Officer shall rule on all motions, unless otherwise provided in these rules. The Presiding Officer may permit oral argument if he considers it necessary or desirable.

§ 670.59 Default order.

(a) *Default.* The Presiding Officer may find a party in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Presiding Officer in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order

shall constitute the initial decision, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended, or the terms and conditions of permit revocation or suspension, or other sanctions.

(d) The Presiding Officer may set aside a default order for good cause shown.

§ 670.60 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Presiding Officer whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, or to other sanctions or actions in mitigation. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the rules without a consent order from the Director or his delegatee. Before signing such an order, the Director or his delegatee may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

(d) *Actions by respondent to clean, protect, enhance, or benefit the environment.* NSF may accept from respondent environmentally beneficial actions, in lieu of penalties, in whole or in part, assessed under the Antarctic Conservation Act. An assessment of the monetary value of any action in mitigation shall be made before that

action is incorporated as a part of any consent agreement and order.

§ 670.61 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

- (1) The settlement of the case;
- (2) The simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) Setting a time and place for the hearing; and
- (7) Any other matters which may expedite the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties (1) the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony, and (2) copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. The Presiding Officer may exclude from evidence any document or testimony not disclosed at the prehearing conference. If the Presiding Officer permits the submittal of new evidence, he will grant parties a reasonable opportunity to respond.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or sua sponte. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or sua sponte, may conduct a telephonic conference or direct the parties to

correspond with him to accomplish any of the objectives set forth in this section.

(e) *Other discovery.* (1) Except as provided by paragraph (b) of this section, further discovery shall be permitted only upon determination by the Presiding Officer that (i) such discovery will not in any way unreasonably delay the proceeding; (ii) the information to be obtained is not otherwise obtainable; and (iii) such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that (i) the information sought cannot be obtained by alternative methods; or (ii) there is substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(3) Any party may request further discovery by motion. Such a motion shall set forth (i) the circumstances warranting the taking of the discovery; (ii) the nature of the information expected to be discovered; and (iii) the proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order granting discovery, with any qualifying conditions and terms.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to (i) the inference that the information to be discovered would be adverse to the party from whom the information was sought; or (ii) the issuance of a default.

§ 670.62 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law regarding all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, if complainant fails to establish a prima facie case, or if other grounds show complainant has no right to relief.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is

issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall then issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

§ 670.63 Scheduling the hearing.

(a) When an answer is filed, the Hearing Clerk shall forward the complaint, the answer, and any other documents filed thus far in the proceeding to the Presiding Officer, who will notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer, the Presiding Officer shall serve upon the parties a notice setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* The Presiding Officer will not grant a request for postponement of a hearing except upon motion and for good cause shown.

§ 670.64 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. Notwithstanding the preceding sentence, evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is inadmissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its introduction into evidence. The Presiding Officer may review such evidence in camera, and issue appropriate protective orders.

(b) *Examination of witnesses.* Parties shall examine witnesses orally, under oath or affirmation, except as otherwise provided in these rules or by the Presiding Officer. Parties shall have the

right to cross-examine a witness who appears at the hearing.

(c) *Verified statements.* The Presiding Officer may admit into the record as evidence, in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are "unavailable," within the meaning of that term under Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticeable in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 670.65 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be made orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

§ 670.66 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, suspension, or other sanction, is appropriate. Following the establishment of a prima facie case, respondent has the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. The Presiding Officer shall decide all controverted matters upon a preponderance of the evidence.

§ 670.67 Filing the transcript.

The hearing shall be transcribed verbatim. After the Presiding Officer closes the record, the reporter shall promptly transmit the original and certified copies to the Hearing Clerk, and one certified copy directly to the Presiding Officer. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may obtain a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer.

§ 670.68 Proposed findings, conclusions, and order.

Unless otherwise ordered by the Presiding Officer, any party may submit proposed findings of fact, conclusions of law, and a proposed order, together with supporting briefs, within twenty (20) days after the parties are notified of the availability of the transcript. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and relied-upon authorities.

§ 670.69 Initial decision.

(a) *Filing and contents.* The Presiding Officer shall issue and file with the Hearing Clerk an initial decision as soon as practicable after the period for filing reply briefs, if any, has expired. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, the reasons for the findings and conclusions, a recommended civil penalty assessment or other sanction, if appropriate, and a proposed final order. Upon receipt of an initial decision, the Hearing Clerk shall

forward a copy to all parties, and shall send the original, along with the record of the proceeding, to the Director.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred, he shall set the dollar amount of the recommended civil penalty in the initial decision in accordance with any criteria set forth in the Act, and must consider any civil penalty guidelines issued by NSF. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended in the complaint, he shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall not raise a penalty from that recommended in the complaint if the respondent has defaulted.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Agency within forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Director is filed by a party to the proceedings; or (2) the Director elects, sua sponte, to review the initial decision.

(d) *Motion to reopen a hearing.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision on the parties and shall (1) state the specific grounds upon which relief is sought; (2) state briefly the nature and purpose of the evidence to be adduced; (3) show that such evidence is not cumulative; and (4) show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Hearing Clerk. Parties shall have ten (10) days following service to respond. The Presiding Officer shall grant or deny such motion as soon as practicable. The conduct of any proceeding which may be required as a result of the granting of any motion to reopen shall be governed by the provisions of the applicable sections of these rules. The filing of a motion to reopen a hearing shall automatically stay the running of all time periods specified under these Rules until such time as the motion is denied or the reopened hearing is concluded.

§ 670.70 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory orders or rulings.* Except as provided in this section, appeals to the Director or, upon delegation, to the General Counsel, shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss, or an initial decision

rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the Presiding Officer, upon motion of a party, certifies such orders or rulings to the Director on appeal. Requests for such certification shall be filed in writing within six (6) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any ruling for appeal to the Director when (1) the order or ruling involves an important question of law or policy and there is substantial grounds for difference of opinion; and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate resolution of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Director or the General Counsel takes no action within thirty (30) days of the certification, the appeal is dismissed. If the Director or the General Counsel decides to hear the interlocutory appeal, he shall make and transmit his findings and conclusions to the Presiding Officer. When the Presiding Officer declines to certify an order or ruling to the Director on interlocutory appeal, it may be reviewed by the Director only upon appeal from the initial decision.

(d) *Stay of proceedings.* The Presiding Officer may stay the proceedings for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstances. Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Director.

§ 670.71 Appeal from or review of initial decision.

(a) *Notice of appeal.* Any party may appeal any adverse initial decision of

the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Hearing Clerk and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record. Within twenty (20) days of the service of notices of appeal and briefs, any other party or amicus curiae may file with the Hearing Clerk a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall be limited to the scope of the appeal brief.

(b) *Sua sponte review by the Director.* Whenever the Director determines sua sponte to review an initial decision, the Hearing Clerk shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* The appeal of the initial decision shall be limited to those issues raised by the parties during the course of the proceeding. If the Director determines that issues raised, but not appealed by the parties, should be argued, he shall give the parties or their representatives written notice of such determination to

permit preparation of adequate argument. Nothing herein shall prohibit the Director from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument.* The Director may, upon request of a party or sua sponte, assign a time and place for oral argument.

§ 670.72 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Director issues a notice of intent to conduct review sua sponte, the Director shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument. The Director shall adopt, modify or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for his actions. The Director may, in his discretion, increase or decrease the assessed penalty from the amount recommended in the decision or order being reviewed, except that if the order being reviewed is a default order, the Director may not increase the amount of the penalty.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the Treasurer, United States of America.

(c) *Money due and owing the United States by virtue of an unappealed final decision or settlement order may be collected by referral to the Department of Justice for appropriate civil action against respondent.*

[FR Doc. 89-1795 Filed 2-15-89; 8:45 am]

BILLING CODE 7555-01-M

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to a detailed examination of the various factors that have shaped the development of the United States, including the role of the individual, the influence of the environment, and the impact of the social system. The paper concludes by emphasizing the need for a balanced and objective approach to the study of history, one that recognizes the complexity of the human condition and the importance of the past in shaping the future.

The second part of the paper is a critical analysis of the various theories and methods used in the study of history. The author examines the strengths and weaknesses of each approach, and offers his own suggestions for improvement. He argues that the most effective way to study history is through a combination of the various methods, each of which brings its own unique perspective to the study. The author also discusses the importance of the use of primary sources in the study of history, and offers his own views on the proper use of these sources.

The third part of the paper is a detailed examination of the various factors that have shaped the development of the United States. The author discusses the role of the individual, the influence of the environment, and the impact of the social system. He argues that the United States has been shaped by a combination of these factors, and that a full understanding of the country's history requires a knowledge of all of them. The author also discusses the importance of the study of the history of the United States, and offers his own suggestions for improvement.

The fourth part of the paper is a critical analysis of the various theories and methods used in the study of history. The author examines the strengths and weaknesses of each approach, and offers his own suggestions for improvement. He argues that the most effective way to study history is through a combination of the various methods, each of which brings its own unique perspective to the study. The author also discusses the importance of the use of primary sources in the study of history, and offers his own views on the proper use of these sources.

The fifth part of the paper is a detailed examination of the various factors that have shaped the development of the United States. The author discusses the role of the individual, the influence of the environment, and the impact of the social system. He argues that the United States has been shaped by a combination of these factors, and that a full understanding of the country's history requires a knowledge of all of them. The author also discusses the importance of the study of the history of the United States, and offers his own suggestions for improvement.

The sixth part of the paper is a critical analysis of the various theories and methods used in the study of history. The author examines the strengths and weaknesses of each approach, and offers his own suggestions for improvement. He argues that the most effective way to study history is through a combination of the various methods, each of which brings its own unique perspective to the study. The author also discusses the importance of the use of primary sources in the study of history, and offers his own views on the proper use of these sources.

The seventh part of the paper is a detailed examination of the various factors that have shaped the development of the United States. The author discusses the role of the individual, the influence of the environment, and the impact of the social system. He argues that the United States has been shaped by a combination of these factors, and that a full understanding of the country's history requires a knowledge of all of them. The author also discusses the importance of the study of the history of the United States, and offers his own suggestions for improvement.

The eighth part of the paper is a critical analysis of the various theories and methods used in the study of history. The author examines the strengths and weaknesses of each approach, and offers his own suggestions for improvement. He argues that the most effective way to study history is through a combination of the various methods, each of which brings its own unique perspective to the study. The author also discusses the importance of the use of primary sources in the study of history, and offers his own views on the proper use of these sources.

The ninth part of the paper is a detailed examination of the various factors that have shaped the development of the United States. The author discusses the role of the individual, the influence of the environment, and the impact of the social system. He argues that the United States has been shaped by a combination of these factors, and that a full understanding of the country's history requires a knowledge of all of them. The author also discusses the importance of the study of the history of the United States, and offers his own suggestions for improvement.

The tenth part of the paper is a critical analysis of the various theories and methods used in the study of history. The author examines the strengths and weaknesses of each approach, and offers his own suggestions for improvement. He argues that the most effective way to study history is through a combination of the various methods, each of which brings its own unique perspective to the study. The author also discusses the importance of the use of primary sources in the study of history, and offers his own views on the proper use of these sources.

Federal Register

Thursday
February 16, 1989

Part III

Department of Justice

Office of Juvenile Justice and
Delinquency Prevention

Research Program on Juveniles Taken
Into Custody; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and
Delinquency PreventionResearch Program on Juveniles Taken
Into Custody

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP).

ACTION: Notice of issuance of solicitation for applications to assist OJJDP in designing, implementing and analyzing a national survey of juveniles taken into custody.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to sections 207(a) and 242 of the Juvenile Justice and Delinquency Prevention Act, as amended, announces a competitive research program entitled "Juveniles Taken into Custody." The purpose of this solicitation is to invite applications from qualified organizations to assist OJJDP in developing and implementing a program to provide nationally representative information regarding juveniles taken into custody. The information developed under this program will be useful to the field in identifying and understanding the trends in juvenile justice.

Pursuant to section 242, the Administrator, acting through OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), invites public or private agencies to submit applications to conduct this research program on Juveniles Taken into Custody. One cooperative agreement will be awarded to an organization to: (1) Identify and analyze existing Federal and State level data; (2) develop a research design, including design of a new survey instrument, a strategy for data collection and plans for analysis; (3) provide necessary field support through development and delivery of appropriate technical assistance; and (4) analyze and prepare reports on juvenile custody data collected under this program. Note: The U.S. Bureau of the Census will have primary responsibility for the collection and processing of new survey data for analysis by the cooperative agreement recipient. These analyses will be included in OJJDP's annual report to the President and Congress and will be disseminated broadly to the juvenile and criminal justice field.

The program period for this award is 18 months. The budget for this program shall not exceed \$450,000. Anticipated project start date is May 1, 1989.

DATE: The deadline for receipt of applications is March 27, 1989.

FOR FURTHER INFORMATION CONTACT:

Barbara Allen-Hagen, Research & Program Development Division, National Institute for Juvenile Justice and Delinquency Prevention, (202)/724-5929.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction and Background
- II. Research Goals and Objectives
- III. Research Design and Strategy
- IV. Dollar Amount and Duration
- V. Eligibility Requirements
- VI. Application Requirements
- VII. Procedures and Criteria for Selection
- VIII. Submission Requirements
- IX. Civil Rights Compliance

I. Introduction and Background

Section 207(1) of the Juvenile Justice and Delinquency Prevention Amendments of 1988 requires OJJDP to submit an annual report to the President and Congress six months after the end of the fiscal year. The deadline for the first report has been extended to August 1, 1989, with subsequent years' reports due by March 31st.

This report must provide a detailed summary and analysis of the most recent available juvenile custody data regarding: The number and individual characteristics of juveniles taken into custody; the rates at which they are taken into custody; the number of juveniles who died while in custody and the circumstances of their deaths.

Section 207(1) specifically requires a detailed summary and analysis of juvenile custody data, presented separately for juvenile nonoffenders, status offenders, and delinquent offenders and by the type of facilities on the following measures:

- (a) The number of juveniles taken into custody;
- (b) The rate at which juveniles are taken into custody;
- (c) The trends demonstrated by the data, disaggregated by:
 - The types of offenses with which the juveniles are charged;
 - The race and gender of the juveniles; and
 - The ages of the juveniles in custody.

The report must provide this information for specified types of detention and correctional facilities, including, but not limited to, secure detention facilities, secure correctional facilities, jails and lockups. Currently there are more than 11,000 facilities nationally that may hold juveniles (nonoffenders, status offenders and delinquent offenders) in custody, including secure juvenile detention and correctional facilities, state prisons, adult jails and lockups as well as other

public and private juvenile custody facilities. It is estimated that together these facilities admit as many as 800,000 juveniles into custody annually. While most facilities record specific demographic, legal and other information for administrative or operational purposes, currently there is no mechanism to collect and synthesize these data on a national level for research, policy or program development purposes.

Existing Federal surveys of these facilities which also collect data on this population, provide little more than basic admission counts as a measure of the number of juveniles taken into custody. Details on characteristics of the juveniles in custody collected in these facility surveys and censuses are usually limited to aggregate-level data for the resident population on the date of the census and do not collect individual-level data.

Statistical data which cannot distinguish the basic demographic and legal characteristics of juveniles taken into custody have limited utility for research (e.g., monitoring trends in the seriousness of juvenile delinquency by race and ethnicity); for policy (e.g., addressing disproportionate representation of minorities in the juvenile justice system); or, for program development (e.g., developing services that address the specific needs of juveniles in custody). The synthesis of existing data and the collection of new data such as that required by Congress should enhance the ability of policy makers, planners and practitioners to identify and respond to trends in the field of juvenile justice.

II. Research Goals and Objectives

A. Research Goals

The purpose of this Program of Research on Juveniles Taken into Custody is to establish a program to document the number and characteristics of juveniles taken into custody by the juvenile and criminal justice system. It is expected that this initiative will result in more effective use of existing information and an expansion of knowledge about the juvenile justice client population. The immediate goals are to assist OJJDP in developing a short-term strategy to meet the reporting mandates of the Act and to establish a system to efficiently collect the necessary information to produce routine annual reports regarding the flow and characteristics of juveniles taken into custody. The long-term goal is to better understand the characteristics and needs of this population so that the

juvenile justice system can identify trends and respond effectively.

R. Objectives

The information required by the 1988 Amendments is not currently available. OJJDP has established the following objectives to produce the required information. The completion dates for these objectives are critical because they directly relate to the timely submission of reports to Congress and the President.

1. To identify and conduct an analysis of existing Federal and State level data sets that provide information regarding the number of juveniles taken into custody and the rate at which they are taken into custody. *Completion date:* June 30, 1989.

2. To develop a research design, including design of a survey instrument to collect the necessary data for the annual report, a strategy for collecting the data, and plans for analysis.

3. To provide the necessary programmatic support to the Census Bureau and technical assistance to the field during the data collection stage.

4. To analyze data and prepare reports based on new juvenile custody survey and existing data from relevant Federal, State and local sources for inclusion in the second annual report. *Completion date:* February 15, 1990.

5. To disseminate information about the program and its findings to a range of audiences through a variety of dissemination strategies. *Completion date:* July 31, 1990.

III. Research Design and Strategy

OJJDP planning and program development activities are guided by a framework which includes four distinct programmatic phases: research, development, demonstration and dissemination. This is a research program. The purpose of the research phase is to develop new knowledge. The program will be conducted in three stages, consisting of: (1) Research design and instrumentation, (2) data collection and (3) data analysis and dissemination of findings.

Project Advisory Board

A project advisory board, consisting of survey methodologists, statisticians, data users and suppliers, practitioners and experts in juvenile justice policy, information systems and program management will be empaneled to provide guidance to the program in carrying out its functions, reviewing plans and products. It is expected that there will be three advisory board meetings during the course of the program period.

The applicant must specify the necessary qualifications of the advisory board members, roles and responsibilities, anticipated tasks and level of compensation. The composition of the board must reflect an appropriate balance of skills and expertise (both programmatic and technical) and have sufficient level of independence (ie: no conflict of interest) to effectively advise the project.

Stage I. Design and Instrumentation

The research design and strategy developed for this program must be designed to identify existing information systems operating in the States that may meet the statutory requirements of section 207(1). In order to avoid placing unnecessary demands on state and local resources in collecting new data, it is expected that the design effort will develop an approach that efficiently utilizes existing data collection systems. In preparing a response to this solicitation, applicants must delineate their approach to both existing information systems and to developing a research design for collection of new data and clearly describe how they will approach the following activities.

Activities

Applicants must describe how the major activities of this stage will be undertaken:

- Establishing and convening the project advisory board;
- Definition of the problem and issues to be addressed;
- Developing a research design and methodology, including data collection instruments, sampling strategy, collection procedures and data processing specifications and analysis plans;
- Identification and evaluation of the content of relevant Federal and state data sets; and
- Development of a preliminary strategy for the dissemination of information about the program, its plans and results.

Products

The following products are to be completed during this stage. Applicants must describe the nature of such products to be prepared and their utility for meeting the objectives of the program.

- A report to Congress and the President by August 1, 1989 on juveniles in custody based on available information and plans to develop new data;
- Research design which includes a statement of the problem; literature review; research objectives; definition of

data elements and measures; and, a time table for major project milestones;

- A compendium of existing Federal and State data sources that address the legislatively prescribed data elements.
- Data collection instruments and forms and detailed strategy for the collection and analysis of existing data sets and new survey data. (The OMB package and data collection manuals for the survey will be prepared by the Census Bureau.)
- A summary report (OJJDP Update or Bulletin) to inform the field of developments in the program during this Stage and future plans.
- Dissemination strategy for products and reports from this program.

Stage II. Data Collection

The Census Bureau will have the primary responsibility for data collection activities related to the new survey. The recipient of the cooperative agreement will provide technical assistance to Census and will gather appropriate automated data sets on juveniles in custody. Specifically, the Census Bureau will be responsible for the following:

Census Bureau Activities

- Developing the submission of the request for OMB review of data collection instruments to be used under this program of research;
- Printing and distribution of data collection forms;
- Selecting the sample for survey;
- Recruiting survey participants;
- Developing and documenting the data collection receipt and control procedures;
- Collecting, cleaning and editing survey data from specified sample;
- Maintaining data file and reporting on response rates and survey data quality; and
- Preparing a data tape from sample survey for analysis.

Census Bureau Products

- The OMB Information Collection submission;
- Data collection forms;
- Sampling frame and sample;
- Data collection manual for survey sites and training manual for field operations;
- Monthly reports on the data collection progress; and,
- Upon completion of specified data collection period(s), data tape for analysis with accompanying documentation.

The cooperative agreement recipient will work closely with the Census Bureau in the data collection phase of

the survey, primarily in a capacity of providing training and technical assistance to Census Bureau staff and field data collection teams. The recipient will also assist in the recruitment effort of participating sites.

During this stage, the primary activities of the recipient will focus on the collection and processing of existing automated data. Applicants must describe how they plan to carry out the following:

Activities

- Identifying and responding to training and technical assistance needs to support the effective implementation of the survey in the field.
- Obtaining relevant State level machine-readable data for analysis;
- Developing procedures for selection, processing and analyzing data provided from different jurisdictions for national reporting;
- Preparing automated data sets from selected jurisdictions, agencies, or departments for analysis;
- Developing and implementing a dissemination strategy to inform the field of the status of the program and the results of this stage.

Products

The following products are to be completed during this stage. Applicants must describe the nature of such products to be prepared and their utility for meeting the objectives of the program.

- Training and technical assistance plan, relevant training manuals and technical assistance materials.
- Standards and procedures for selecting and processing data from different jurisdictions for national reporting and those data sets to be prepared for analysis.
- Quarterly status reports on the number of jurisdictions participating, and the quality and utility of the data provided.
- A summary report to inform the field of developments in the program during this Stage and future plans.
- Dissemination strategy for products and reports from this stage of the program.

Stage III. Data Analysis and Preparation of Reports

The recipient will be responsible for conducting all analyses of data and preparing reports on the findings and for making recommendations for program modifications.

Applicants must describe how they plan to carry out the following:

Activities

- Preparation of a plan for data analysis and report preparation;
- Analysis of relevant Federal and State data sets and survey data for preparation of the second annual report to Congress and the President by February 28, 1990.
- Preparation of draft reports;
- Advisory committee review of analyses and draft reports;
- Preparation of a final report which includes:
 - Literature review
 - Summary of methodology
 - Data analyses
 - Conclusions and Implications
 - Recommendations regarding program revisions
- Development and implementation of a dissemination strategy.

Products

The following products are to be completed during this stage. Applicants must describe the nature of such products to be prepared and their utility for meeting the objectives of the program.

- Plan for analysis and report preparation;
- Report for inclusion in the second annual OJJDP report to Congress and the President;
- Final report(s)
- Dissemination strategy to inform the field regarding the results of the program.

IV. Dollar Amount and Duration

One cooperative agreement will be awarded to the successful applicant. The project period is 18 months. OJJDP has allocated up to \$450,000 to support the activities and functions outlined in this solicitation (See Section III. Research Design and Strategy.) Applicants should anticipate a May 1, 1989, start-up date.

V. Eligibility Requirements

Applications are invited from public and private agencies and organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Co-applicants must demonstrate they have the capability to work together effectively in order to be considered as co-applicants for this program. In order to expand the pool of eligible candidates, applications will be accepted from for-profit agencies as long as they agree to waive their profit fee and accept only actual allowable costs.

Applicants and co-applicants must demonstrate that they have prior experience in the design, conduct and implementation of multijurisdictional surveys; demonstrated knowledge of issues associated with juvenile justice statistics; prior experience in the development and delivery of training or technical assistance; and research and evaluation of the juvenile justice system.

Applicants must also demonstrate that they have the management capability, fiscal integrity and financial responsibility, including, but not limited to, an acceptable accounting system and internal controls, compliance with grant fiscal requirements, such capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (Section VI) in Part IV, Program Narrative of the application (SF-424). The program narrative of the application should not exceed 70 double-spaced pages in length.

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must also provide a certification they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2, which will be supplied with the application package must be submitted with the application.

In submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF-424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of \$10,000.

The following information must be included in the application (SF-424) Part IV Program Narrative:

A. Organizational Capability—

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in Section V above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append one example of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures that assure Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Assistance, Research and Statistics (OJARS) Accounting System and Financial Capability Questionnaire (OJARS Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. All questions are to be answered regardless of instructions (Section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Research Design and Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of the program. A detailed discussion of how each of three stages of the program would be accomplished should be included. Attention will be given to how the applicant proposes resolving substantive and methodological issues associated with analyzing existing data and designing a new data collection

effort that meets the statutory requirements.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program, describe how they will allocate available resources to implement the program, and how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational/functional components, and a list of key personnel responsible for managing and implementing the two major elements of the program. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual resumes may be submitted as appendices to the application.

E. Time-Task Plan—Applicants must develop a time-task plan for the 18-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in Section III. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience, and usefulness to the field of each product.

G. Program Budget—Applicants shall provide a 18-month budget with a detailed justification for all costs, including the basis for computation of these costs. Applicants should include a budget estimate to complete the balance of the program. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. The budget should include funds for a three-person Program Advisory Committee to meet three times during the 18-month budget period.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section VI. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985, at 50 FR 31366-31367. The selection criteria

and their point values (weights) are as follows:

A. Organizational Capability (20 Points)

The extent and quality of organizational experience in the design, development, and implementation of research programs that have been national in scope.

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

C. Qualifications of Project Staff (25 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (20 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (5 points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (10 Points)

Completeness, reasonableness, appropriateness and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Organizations that plan to respond to this announcement are requested to submit a written notification of their

intent to apply to OJJDP by March 1, 1989. Such notification should specify the name, address and telephone number of the organization; co-applicants, if any; and contact persons. This notification submission is optional and will be used to estimate the application review workload.

2. Upon request to OJJDP, the necessary forms for application (SF-424) will be provided, along with Department certification information.

3. Applicants must submit the original signed application (Standard Form 424) and three copies to OJJDP, including the certification that the organization has not been disbarred (Form 4662/2). All applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on March 27, 1989. Those applications sent by mail should be addressed to: NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana

Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP, Room 782, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation

Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-3644 Filed 2-15-89; 8:45 am]

BILLING CODE 4410-16-M

Registered

Thursday
February 16, 1989

Part IV

Department of Education

34 CFR Part 60

Indemnification of Department of Education Employees; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 60

Indemnification of Department of Education Employees

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education adds a new Part 60 to Title 34 of the Code of Federal Regulations. These regulations parallel provisions adopted by the Department of Justice (28 CFR Part 50), the Department of Health and Human Services (45 CFR Part 36), and the Small Business Administration (13 CFR Part 114). The regulations permit indemnification of Department of Education employees in appropriate situations, as determined by the Secretary.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Steven Y. Winnick, Acting Deputy General Counsel for Departmental Service, Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, (202) 732-2605.

SUPPLEMENTARY INFORMATION: The Department of Education (ED) does not currently indemnify its employees who are sued personally and suffer an adverse judgment as a result of conduct taken within the scope of employment, nor does it pay for settlement of claims against employees who are sued in their individual capacities.

Since the 1971 decision of the U.S. Supreme Court in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, lawsuits against Federal employees in their individual capacities have proliferated. Recent statistics from the Department of Justice indicate that more than 14,000 claims have been filed against Federal employees personally since the *Bivens* case. Nearly 5,000 of these suits are pending. A number of these suits have been filed against ED officials.

The recent enactment of the Federal Employees Liability Reform and Tort Compensation Act of 1988, Pub. L. 100-694, does not eliminate the need for these regulations. That Act provides, in essence, that a Federal employee can no longer be personally sued for common law torts arising from acts within the scope of employment. This legislation, however, does not apply to claims arising under the Constitution. Accordingly, Federal employees remain subject to constitutional tort actions in their personal capacities.

The potential for adverse judgments against a Federal employee for actions taken within the scope of employment is detrimental to both the individual employee and the Federal Government. Although there are currently provisions for employees to request representation by the Department of Justice in these actions, the individual employee still bears the risk of personal liability for an adverse judgment. Moreover, the prospect of personal liability and the uncertainty as to what conduct may result in a lawsuit against the employee personally may intimidate employees, impede creativity, and stifle initiative and decisive action. Employees' concerns regarding personal liability can affect Government operations, decision making, and policy determinations.

A provision for indemnification of ED employees would help alleviate these problems and would afford these employees the same protection given other Federal officials.

These regulations permit, but do not require, ED to indemnify a Department employee who suffers an adverse judgment or other monetary award. Indemnification is provided only if the actions leading to the award were taken within the scope of employment and if the indemnification is in the interest of the United States, as determined by the Secretary. The Department anticipates that, in making this determination, the Secretary will take into account various factors such as the nature of the employee's actions, the relationship of those actions to the employee's employment, the cooperation of the employee in the conduct of the proceeding, the nature of the adverse judgment, and the potential effect on future departmental operations.

Under the same standards, these regulations also allow ED to pay Department funds to settle a claim against an employee in his or her individual capacity. The Department does not indemnify or settle before entry of an adverse judgment unless the Secretary determines that exceptional circumstances justify an exception. This limitation is designed to discourage the filing of lawsuits against Federal employees in their individual capacities in order to pressure the Government into settlement.

These regulations apply to actions pending against ED employees as of the effective date of the regulations, as well as to actions commenced after that date.

Paperwork Reduction Act of 1980

These regulations are not subject to the Paperwork Reduction Act because they deal solely with internal matters governing ED personnel.

Inapplicability of Proposed Rulemaking

The Secretary has determined, under 5 U.S.C. 553(a)(2), that these regulations do not require public notice and comment because they relate to the management and personnel of the Department.

List of Subjects in 34 CFR Part 60

Administrative practice and procedure, Government employees.

Dated: February 13, 1989.

Lauro F. Cavazos,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number does not apply)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 60 to read as follows:

PART 60—INDEMNIFICATION OF DEPARTMENT OF EDUCATION EMPLOYEES

Sec.

60.1 What are the policies of the Department regarding indemnification?

60.2 What procedures apply to requests for indemnification?

Authority: 20 U.S.C. 3411, 3461, 3471, and 3474.

§ 60.1 What are the policies of the Department regarding indemnification?

(a) (1) The Department of Education may indemnify, in whole or in part, an employee for any verdict, judgment, or other monetary award rendered against the employee if—

- (i) The conduct giving rise to the verdict, judgment, or award occurred within the scope of his or her employment with the Department; and
- (ii) The indemnification is in the interest of the United States, as determined by the Secretary.

(2) The regulations in this part apply to an action pending against an ED employee as of March 30, 1989, as well as to any action commenced after that date.

(3) As used in this part, the term "employee" includes—

- (i) A present or former officer or employee of the Department or of an advisory committee to the Department, including a special Government employee;
- (ii) An employee of another Federal agency on detail to the Department; or
- (iii) A student volunteer under 5 U.S.C. 3111.

(4) As used in this part the term "Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(b) (1) The Department may pay, in whole or in part, to settle or compromise a personal damage claim against an employee if—

(i) The alleged conduct giving rise to the personal damage claim occurred within the scope of employment; and

(ii) The settlement or compromise is in the interest of the United States, as determined by the Secretary.

(2) Payment under paragraph (b)(1) of this section may include reimbursement, in whole or in part, of an employee for prior payment made by the employee under a settlement or compromise that meets the requirements of this section.

(c) The Department does not indemnify or settle a personal damage claim before entry of an adverse verdict, judgment, or monetary award unless the Secretary determines that exceptional circumstances justify the earlier indemnification or settlement.

(d) Any payment under this part, either to indemnify a Department of Education employee or to settle a personal damage claim, is contingent upon the availability of appropriated funds.

(Authority: 20 U.S.C. 3411, 3461, 3471, and 3474)

§ 60.2 What procedures apply to requests for indemnification?

(a) When an employee of the Department of Education becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee shall immediately notify the head of his or her principal operating component and shall cooperate with appropriate officials of the Department in the defense of the action.

(b) As part of the notification in paragraph (a) of this section or at a later time, the employee may request—

(1) Indemnification to satisfy a verdict, judgment, or award entered against the employee; or

(2) Payment to satisfy the requirements of a settlement proposal.

(c) (1) The employee's request must be in writing to the head of his or her principal operating component and must be accompanied by copies of the complaint and other documents filed in the action, including the verdict,

judgment, award, settlement, or settlement proposal, as appropriate.

(2) (i) As used in this section, the term "principal operating component" means an office in the Department headed by an Assistant Secretary, a Deputy Under Secretary, or an equivalent departmental officer who reports directly to the Secretary.

(ii) The term also includes the Office of the Secretary and the Office of the Under Secretary.

(d) The head of the employee's principal operating component submits to the General Counsel, in a timely manner, the request, together with a recommended disposition of the request.

(e) The General Counsel forwards to the Secretary for decision—

(1) The employee's request;

(2) The recommendation of the head of the employee's principal operating component; and

(3) The General Counsel's recommendation.

(Authority: 20 U.S.C. 3411, 3461, 3471, and 3474)

[FR Doc. 89-3685 Filed 2-15-89; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Thursday
February 16, 1989

Part V

Department of Education

**Rehabilitation Services Administration;
Rehabilitation Training Projects; Notice of
Proposed Funding Priorities for Fiscal
Year 1989 and 1990**

DEPARTMENT OF EDUCATION**Rehabilitation Services Administration;
Rehabilitation Training Projects****AGENCY:** Department of Education.**ACTION:** Notice of proposed funding priorities for fiscal years 1989 and 1990.

SUMMARY: The Secretary of Education proposes funding priorities in fiscal years 1989 and 1990 for rehabilitation training activities to be supported under the following Rehabilitation Training Programs of the Rehabilitation Services Administration:

- Rehabilitation Long-Term Training.
- Experimental and Innovative Training.

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: All comments concerning these proposed funding priorities should be addressed to Susan Daniels, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3038), Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT:

Delores L. Watkins, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3324), Washington, DC 20202-2649. (Telephone: (202) 732-1400).

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities, especially those who are the most severely disabled. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of training programs for rehabilitation personnel, to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe

disabilities, and to develop new and improved methods of training rehabilitation personnel and to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

The Department has initiated a study in 1988 to update data collected in 1986 in a previous study of rehabilitation personnel shortages completed in 1987. Data collected through the planned study will be used to assist in directing Rehabilitation Training Program funds to areas of identified rehabilitation personnel shortage in fiscal years 1989 and 1990. Based on the results of the study, it may be necessary to make revisions in funding priorities established for the Rehabilitation Training Program for fiscal years 1989 and 1990.

Eligible Applicants

Awards are made under this program to State vocational rehabilitation agencies and other public and private agencies and organizations, including institutions of higher education.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to set aside funds and give an absolute preference to applications submitted under the Rehabilitation Long-Term Training Program in the field of Rehabilitation Counseling and under the Experimental and Innovative Training Program that address the priorities described in the notice. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities. RSA invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities.

The final priorities will be announced in a notice in the *Federal Register*. The final priorities will be determined by responses to this notice, available funds, and other Departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these training areas, unless otherwise specified in statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

Proposed Priorities for Rehabilitation Long-Term Training Program*Priority 1—Rehabilitation Counseling*

Applications must be submitted in the long-term training field of Rehabilitation Counseling to provide training at the master's degree level that is designed to improve and strengthen the capacity of rehabilitation counselors to serve and place individuals with severe disabilities in employment, especially competitive employment, and to arrange for independent living rehabilitation services and promote community options for individuals with severe disabilities. The training must directly involve trainees with business and industry in providing rehabilitation services, especially placement services, to individuals with severe physical and mental disabilities, and in providing independent living rehabilitation services to individuals with severe disabilities. The coursework must be designed to provide trainees with skills and knowledge in: (1) Interpreting diagnostic, psychological, and educational background information to assess the functional capacities of, and do vocational and independent living rehabilitation planning for individuals with disabilities, including traumatically brain-injured individuals, chronically mentally ill individuals, and learning-disabled individuals; and (2) planning effective vocational and independent living rehabilitation programs for, and delivering rehabilitation services to, individuals with disabilities, including traumatically brain-injured, chronically mentally ill, and learning-disabled individuals; (3) job development, job modification, and job restructuring; (4) workers' compensation programs; (5) providing vocational and independent living rehabilitation services to individuals with disabilities to facilitate their transition from school to employment; (6) providing supported employment services to individuals with disabilities; (7) providing services to individuals with disabilities to facilitate their integration in the community; (8) the applicability of sections 501, 502, 503, and 504 of the Rehabilitation Act and their implications for placement of individuals with disabilities, including the implications of section 504 for non-discrimination in all programs receiving Federal financial assistance; (9) utilizing rehabilitation engineering resources; (10) the services available under the Client Assistance Program; and (11) consulting with employers and potential employers to identify employment opportunities for individuals with disabilities, to educate and train employers in identifying and removing

barriers to the employment of individuals with disabilities, and to educate or train employers and potential employers about various disabilities and the vocational implications of those disabilities. Practicum training must involve trainees directly with business and industry in developing jobs for and placing individuals with disabilities in competitive employment and with agencies providing independent living rehabilitation services to individuals with disabilities. The practicum training may include trainee experiences in business and industry settings and independent living programs.

Awards made in this field will be grants.

Priority 2—Other

Applications submitted under this priority must be directed to the collection, cataloging, storage, and dissemination of rehabilitation training materials.

This priority is intended to ensure that training materials of all types developed under the Rehabilitation Training Program and other training materials relevant for the training of rehabilitation personnel are available for dissemination to the rehabilitation community.

Applications submitted under this priority must demonstrate the need for the training support activity, define the proposed approach to be utilized, and

substantiate the cost effectiveness of the proposed approach.

The award made under this priority will be a cooperative agreement.

Proposed Priority for Experimental and Innovative Training Program

The training under this priority must address the training of direct service delivery personnel to provide community-based supported employment services. The 1986 Amendments to the Rehabilitation Act of 1973 established a State supported employment formula grant program and added supported employment as an acceptable employment outcome under the State vocational rehabilitation services program under Title I of the Act. While supported employment is a viable rehabilitation method for achieving competitive employment for individuals with the most severe disabilities, there is a critical shortage of direct service delivery personnel, such as job coaches, to provide supported employment services. Unless this shortage is addressed, the full benefits of the new program and services under the vocational rehabilitation program may be delayed unnecessarily.

Training under this priority may be academic or non-academic in nature. Non-academic training should include a sequential series of workshops or seminars and practicum experiences in community-based settings that directly involve trainees in providing supported

employment services to individuals with the most severe disabilities. Programs should provide intensive training in all skill areas necessary for direct service personnel to provide effective supported employment services.

Individuals who will be trained in the program may be currently employed, recruited from retirement, or already participating in another educational program. The training may be supplementary to an existing training program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3038, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Authority: 29 U.S.C. 774.

Dated: January 23, 1989.

Lauro F. Cavazos,
Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)
[FR Doc. 89-3682 Filed 2-15-89; 8:45 am]

BILLING CODE 4000-01-M

[The text on this page is extremely faint and illegible. It appears to be a multi-column document, possibly a ledger or a report, with several columns of text. The content is too faded to transcribe accurately.]

Federal Register

Thursday
February 16, 1989

Part VI

Department of Education

**Rehabilitation Services Administration;
Special Projects and Demonstrations for
Fiscal Years 1989 and 1990; Notice of
Proposed Funding Priorities**

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration; Special Projects and Demonstrations for Fiscal Years 1989 and 1990

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities.

SUMMARY: The Secretary of Education proposes funding priorities for fiscal years 1989 and 1990 for service activities to be supported under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps of the Rehabilitation Services Administration (RSA).

DATE: Comments must be received on or before March 20, 1989.

ADDRESS: All comments concerning these proposed funding priorities should be addressed to Susan Daniels, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3038), Washington, DC 20202-2575.

FOR FURTHER INFORMATION CONTACT:

Delores L. Watkins, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3324), Washington, DC 20202-2649. (Telephone: (202) 732-1400).

SUPPLEMENTARY INFORMATION:

Grants under the Program of Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Individuals with Severe Handicaps are authorized by Title III, section 311(a)(1) of the Rehabilitation Act of 1973, as amended. The purpose of this program is to expand and otherwise improve rehabilitation services to individuals with the most severe disabilities.

Eligible Applicants

Under the Special Projects Program, awards are made to State and other public and nonprofit agencies and organizations.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3), the Secretary proposes to set funds aside and give an absolute preference to applications that respond to the proposed priorities under the program described in this notice for fiscal years 1989 and 1990; that is, the Secretary proposes to select for funding only those applications proposing

projects that meet these priorities. RSA invites public comment on the merits of the proposed priorities, including suggested modifications to the proposed priorities.

The final priorities will be announced in the *Federal Register*. The final priorities will be determined by responses to this notice, available funds, and other Departmental considerations. The publication of these proposed priorities does not bind the United States Department of Education to fund projects in these service areas, unless otherwise specified by statute. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received.

Priority 1—Rehabilitation Technology Services

There is increasing awareness that the application of innovative rehabilitation technology and rehabilitation engineering advances can be used to help individuals with disabilities meet and eliminate the barriers they face in employment. The purpose of this proposed priority is to solicit applications that will demonstrate models to facilitate the use and delivery of rehabilitation technology and rehabilitation engineering services to individuals with disabilities to enhance their employability. Applicants must insure that their proposals take into consideration activities conducted by the regional engineering centers supported by the National Institute on Disability and Rehabilitation Research (NIDRR), if appropriate. The applicant shall propose a project that will demonstrate a model approach to developing and implementing one of the following: (1) A local community-based model system of rehabilitation technology information exchange to improve the delivery of rehabilitation services; (2) a local community-based model system of rehabilitation technology service delivery for rural or underserved populations; (3) a local community-based model to provide long-term technology assistance, such as the use of volunteer and peer networks to assist in the repair and maintenance of devices, updating and improvement of technological devices to meet new or emerging needs of individuals with disabilities; (4) a model to increase the availability of reliable and durable assistive technology devices that address unique, low-market demand, or complex technology-related needs of individuals with disabilities; (5) a model to assist in the transfer of technology that is not specifically designed for

individuals with disabilities to uses appropriate for such individuals, such as automotive equipment and adaptive devices, use of small appliances, and use of luxury items; (6) a model to assess the satisfaction of consumers with assistive devices in such areas as repairs and instruction in the use of these devices, and ways to use consumer feedback to improve the rehabilitation process; or (7) a model to coordinate available financial resources, especially local resources, to create financing systems for the delivery of rehabilitation technology services.

Each application must respond to only one of the described priority areas. A separate competition will be conducted for each priority area.

Priority 2—Innovative Strategies to Promote Vocational and Independent Living Outcomes

The use of innovative strategies to promote vocational and independent living outcomes could significantly improve the ability of individuals with disabilities to eliminate barriers they face in the community and increase their control over decisions concerning their daily living choices, including vocational options, and facilitate their integration into the community.

The applicant shall propose a demonstration project designed to promote vocational and independent living outcomes for individuals with severe disabilities. The applicant shall use such mechanisms as peer counseling, job clubs, and consumer networks to assist individuals with severe disabilities to use typical social networks (for example, friends, family, neighbors, co-workers, professional associations, and community organizations), i.e., social networks that are used routinely by individuals without disabilities to achieve vocational and other goals.

For this competition only, the Secretary proposes to review applications under this priority in accordance with selection criteria in §§ 369.31 and 373.30, with the following exceptions and amendments. The criteria in § 373.30(f) (service comprehensiveness) and § 373.30(g) (relevance to the State-Federal rehabilitation service program) would not apply to this competition. The criterion in § 369.31(a) (plan of operation) would be amended to add a new paragraph (a)(2)(vi) to read as follows, "A plan for the involvement of individuals with disabilities in the planning and implementation of the project.", and the points assigned to this criterion would be increased to 25

points. The criterion in § 369.31(d) (evaluation plan) would be amended to add a new paragraph (d)(1)(3) to read as follows, "The Secretary looks for information that shows that the applicant will generate data that demonstrates the impact of the project on the vocational and independent living outcomes of the individuals served.", and the points assigned to this criterion would be increased to 15 points. Also, the points assigned to the

criterion (innovativeness of approach) would be increased to 20 points.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period in Room 3038, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between

the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(29 U.S.C. 777a(a)(1)).

Dated: January 23, 1989.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.128A, Rehabilitation Services Administration)

[FR Doc. 89-3684 Filed 2-15-89; 8:45 am]

BILLING CODE 4000-01-M

The first part of the document is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The second part of the document is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The third part of the document is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

The letter is a formal document and is written in a formal style. It is a letter from the Secretary of the Board of Directors to the Board of Directors. The letter is dated January 1, 1900, and is addressed to the Board of Directors. The letter is signed by the Secretary of the Board of Directors.

Federal Register

Thursday
February 16, 1989

Part VII

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, and 16
Implementation of the Alcoholic
Beverage Labeling Act of 1988; Health
Warning Statement; Temporary Rule and
Proposed Rule

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, and 16

[T.D. ATF-282]

Implementation of the Alcoholic Beverage Labeling Act of 1988 (Pub. L. 100-690); Health Warning Statement

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements the provisions of the Alcoholic Beverage Labeling Act of 1988, Title VIII of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, 102 Stat. 481). These regulations implement the statute by requiring that a health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed in the United States. This rule will have the effect of promoting the public health and safety, which is the stated purpose of the statute.

The temporary rule will remain in effect until superseded by final regulations on the subject.

In the same separate part, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 45-day period following the publication date of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective February 16, 1989; and, become mandatory on November 18, 1989.

FOR FURTHER INFORMATION CONTACT:

James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7826).

SUPPLEMENTARY INFORMATION:**Legislative Background**

Title VIII of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690 (enacted November 18, 1988), amended the Federal Alcohol Administration Act (FAA Act) of August 29, 1935 (27 U.S.C. § 201 et seq.) by designating the existing sections of the FAA Act as "Title I," and by adding at the end a new title, "Title II—Alcoholic Beverage Labeling." This title, cited as the "Alcoholic Beverage Labeling Act of 1988" (hereinafter, "Title II" or "the Act"), requires that a specific health warning statement appear on the labels of all containers of alcoholic beverages for sale or distribution in the United States. This requirement applies both to interstate and intrastate sale

and distribution of alcoholic beverages. In addition, the health warning statement must appear on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement required by Title II advises of the risks of birth defects in pregnant women, impairment of the ability to operate a car or other machinery, and other potential health problems resulting from the consumption of alcoholic beverages. As stated in section 202 of the Act:

The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information * * *.

Thus, for the reasons noted above, the law provides that no State may require any statement concerning alcoholic beverages and health, other than the required health warning statement, on any alcoholic beverage container, or box, carton, or other package that contains such a container.

For purposes of Title II, the term "alcoholic beverage" includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption. Thus, the term includes distilled spirits products, malt beverages, wines and wine coolers. The term "container" is defined as the innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

Section 204 of the Act provides that compliance with the health warning labeling requirement becomes effective one year after the date of enactment of Title II (November 18, 1989). This section also requires the Secretary of the Treasury to prescribe regulations regarding the placement, type size, etc. of the health warning statement.

Temporary Rule—Health Warning Statement

In accordance with the provisions of section 204(a) of the Act, the following health warning statement shall appear on the labels of all imported or domestic alcoholic beverages bottled on and after November 18, 1989, for sale or distribution in the United States:

Government warning: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The legislative history of the Act clearly shows that Congress intended that the health warning statement be placed on the labels of alcoholic beverage containers at the time of bottling. In that regard, the report of the Senate Committee on Commerce, Science, and Transportation on the Alcoholic Beverage Labeling bill (S. 2047) stated: "The bill, as reported, requires that bottlers affix a warning label to all alcoholic beverage containers bottled 12 months or more after the date of enactment." S. Rep. No. 596, 100th Cong., 2d Sess. 3 (1988). The report goes on to note that "[t]he Committee does not intend that the labeling requirement * * * require the labeling or relabeling of alcoholic beverages that were bottled prior to the expiration of the 12-month period specified * * *." S. Rep. No. 596 at 6-7. Thus, alcoholic beverages bottled prior to November 18, 1989, whether labeled or not, need not include the health warning statement on the container. If requested, U.S. importers and bottlers shall provide documentation verifying that such products were bottled prior to November 18, 1989.

In addition, section 204(b) of the Act specifies that the health warning statement "shall be located in a conspicuous and prominent place on the container * * * as determined by the Secretary, shall be in type of a size determined by the Secretary, and shall appear on a contrasting background."

Congress anticipated that the Secretary of the Treasury, when making the determinations noted above, "may consider current (alcoholic beverage labeling) regulations and will need to take into account variations in the size and shape of individual containers * * *." S. Rep. No. 596 at 7.

Placement/Legibility

In determining the requirements for disclosure of the health warning statement the Bureau has relied upon the current regulations as set forth in Title 27, Code of Federal Regulations (CFR), Parts 4, 5, and 7 relating to the labeling and advertising of wine, distilled spirits, and malt beverages, respectively. In particular, the Bureau believes that consideration of the existing labeling requirements for the mandatory disclosure of the artificial sweetener saccharin is appropriate,

since these requirements were implemented by the Bureau in recognition of the health warning statement set forth in the Saccharin Study and Labeling Act (21 U.S.C. 343).

As specified in existing regulations, 27 CFR 4.32(d), 5.32(b)(6), and 7.22(b)(5), any alcohol beverage product which contains saccharin must bear on its label a health warning statement disclosing the presence of that ingredient. The warning statement may appear on a front (i.e., brand label or separate front label) or back label, and shall be separate and apart from all other information. In giving effect to this requirement, the Bureau has authorized disclosure on a side label. Furthermore, as prescribed in 27 CFR 4.38, 5.33, and 7.28, all mandatory labeling information, including the saccharin warning, must be readily legible and on a contrasting background.

Similarly, with this temporary rule, the Bureau is adopting regulations which will require the health warning statement prescribed in Title II to appear on the brand label or separate front label, or on a back or side label, separate and apart from all other information, readily legible and on a contrasting background. Furthermore, the label upon which the health warning statement appears must be firmly affixed to the container. The Bureau believes that these regulations provide flexibility to producers of alcoholic beverages with respect to the placement of the warning statement and also comply with the requirement that the warning statement be "conspicuous and prominent."

Type Size

Minimum type size requirements for mandatory label information for wine, distilled spirits, and malt beverages are prescribed in 27 CFR 4.38(b), 5.33(b), and 7.28(b), respectively. For containers of wine bottled in an authorized metric standard of fill of more than 187 milliliters (6.3 fl. oz.) i.e., 375 milliliters, 750 milliliters, 1 liter, 1.5 liters, 3 liters, etc., the minimum type size for mandatory information (excluding alcoholic content) is two millimeters. For containers of wine bottled in an authorized metric standard of fill of 187 milliliters or less (i.e., 100 milliliters or 50 milliliters), the minimum type size for mandatory information is one millimeter.

For containers of distilled spirits bottled in an authorized metric standard of fill of more than 200 milliliters (6.8 fl. oz.) i.e., 375 milliliters, 500 milliliters, 750 milliliters, 1 liter, or 1.75 liters, the minimum type size for mandatory information is two millimeters. For

containers of distilled spirits bottled in an authorized metric standard of fill of 200 milliliters or less i.e., 100 milliliters or 50 milliliters, the minimum type size for mandatory information is one millimeter.

For malt beverages in containers having a capacity of more than one-half pint (8 fl. oz.), approximately 237 milliliters, the minimum type size for mandatory information is two millimeters. For containers of one-half pint or less, the minimum type size for mandatory information is one millimeter.

As indicated above, Congress intended that the type sizes currently required for mandatory label information, noted above, be considered for the health warning statement and that variations in size and shape of container be taken into account. Thus, for alcoholic beverages in large containers, the health warning statement shall appear in a type size not smaller than two millimeters. For small containers, the health warning statement shall not be smaller than one millimeter.

Specifically, this temporary rule prescribes regulations which require that, for alcoholic beverages in containers having a capacity of more than 237 milliliters (8 fl. oz.), the minimum type size for the health warning statement is two millimeters. For containers of alcoholic beverages having a capacity of 237 milliliters or less, the minimum type size for the health warning statement is one millimeter.

Exports

Section 204(c) of Title II provides that the health warning labeling requirement does not apply to alcoholic beverages produced, imported, bottled, or labeled for export from the United States, or for delivery to an aircraft or vessel as supplies for consumption beyond the jurisdiction of the internal revenue laws of the United States. As previously noted, this exemption does not apply to alcoholic beverages for sale, distribution, or shipment to the U.S. Armed Forces.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this document is not a major rule, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, it is found that this temporary rule will not result in:

(a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Administrative Procedure Act

Because this document merely implements a law which requires that a health warning statement appear on the labels of all alcoholic beverages, and because immediate guidance is necessary to implement the provisions of that law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this temporary rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this temporary rule because no requirement to collect information is imposed.

Drafting Information

The author of this document is James P. Ficareta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors and, Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

27 CFR Part 16

Beer, Consumer protection, Customs duties and inspection, Health, Imports, Labeling, Liquors, Packaging and containers, Safety, and Wine.

Authority and Issuance

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents is amended by adding in the CROSS REFERENCES section the phrase "27 CFR Part 16—Alcoholic Beverage Health Warning Statement." immediately after "27 CFR Part 7—Labeling and Advertising of Malt Beverages."

Par. 3. Section 4.32 is amended by adding a new paragraph (f) to read as follows:

§ 4.32 Mandatory label information.

(f) There shall be stated on the brand label or separate front label, or on a back or side label, separate and apart from all other information, the health warning statement required by 27 CFR Part 16.

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

PART 5—[AMENDED]

Par. 4. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 5. Section 5.2 is amended by adding a new phrase immediately after "27 CFR Part 7—Labeling and Advertising of Malt Beverages." to read as follows:

§ 5.2 Related regulations.

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

Par. 6. Section 5.32 is amended by adding a new paragraph (d) to read as follows:

§ 5.32 Mandatory label information.

(d) There shall be stated on the brand label, or on a back or side label, separate and apart from all other information, the health warning statement required by 27 CFR Part 16.

27 CFR Part 7—Labeling and Advertising of Malt Beverages is amended as follows:

PART 7—[AMENDED]

Par. 7. The authority citation for 27 CFR Part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 8. Section 7.4 is amended by adding a new phrase immediately after "27 CFR Part 5—Labeling and Advertising of Distilled Spirits." to read as follows:

§ 7.4 Related regulations.

27 CFR Part 16—Alcoholic Beverage Health Warning Statement.

Par. 9. Section 7.22 is amended by adding a new paragraph (c) to read as follows:

§ 7.22 Mandatory label information.

(c) On the brand label or separate front label, or on a back or side label, separate and apart from all other information, the health warning statement required by 27 CFR Part 16.

Par. 10. Title 27 is amended by the addition of Part 16 to read as follows:

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT**Subpart A—Scope**

Sec.

16.1 General.

16.2 Territorial extent.

Subpart B—Definitions

16.10 Meaning of terms.

Subpart C—Health Warning Statement Requirements for Alcoholic Beverages

16.20 General.

16.21 Mandatory label information (not mandatory before November 18, 1989).

16.22 General requirements.

Subpart D—General Provisions

16.30 Exports.

16.31 Preemption.

Authority: 27 U.S.C. 215.

Subpart A—Scope**§ 16.1 General.**

The regulations in this part relate to a health warning statement on labels of containers of alcoholic beverages.

§ 16.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and the territories and possessions of the United States.

Subpart B—Definitions**§ 16.10 Meaning of terms.**

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this section.

Act. The Alcoholic Beverage Labeling Act of 1988.

Alcoholic beverage. Includes any beverage in liquid form which contains not less than one-half of one percent (.5%) of alcohol by volume and is intended for human consumption.

Bottle. To fill a container with an alcoholic beverage and to seal such container.

Bottler. A person who bottles an alcoholic beverage.

Brand label. The label carrying, in the usual distinctive design, the brand name of the alcoholic beverage.

Container. The innermost sealed container, irrespective of the material from which made, in which an alcoholic beverage is placed by the bottler and in which such beverage is offered for sale to members of the general public.

Health. Includes, but is not limited to, the prevention of accidents.

Person. Any individual, partnership, joint-stock company, business trust, association, corporation, or any other business or legal entity, including a receiver, trustee, or liquidating agent, and also includes any State, any State agency, or any officer or employee thereof.

Sale and distribution. Includes sampling or any other distribution not for sale.

State. Includes any political subdivision of any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, or Johnston Island.

State law. Includes State statutes, regulations and principles and rules having the force of law.

United States. The several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, Wake Island, the Midway Islands, Kingman Reef, and Johnston Island.

Use of other terms. Any other term defined in the Alcoholic Beverage Labeling Act and used in this part shall have the same meaning as assigned to it by the Act.

Subpart C—Health Warning Statement Requirements for Alcoholic Beverages**§ 16.20 General.**

On and after November 18, 1989, no person shall bottle for sale or distribution in the United States any alcoholic beverage unless the container of such beverage bears the health warning statement required by § 16.21.

§ 16.21 Mandatory label information (not mandatory before November 18, 1989).

There shall be stated on the brand label or separate front label, or on a back or side label, separate and apart from all other information, the following statement:

Government warning: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems. (Sec. 8001, Pub. L. 100-690, 102 Stat. 4181, 27 U.S.C. 215)

§ 16.22 General requirements.

(a) *Legibility.* All labels shall be so designed that the statement required by

§ 16.21 is readily legible under ordinary conditions, and such statement shall be on a contrasting background.

(b) *Size of type.* (1) Containers of more than 237 milliliters (8 fl. oz.). The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 2 millimeters. (2) Containers of 237 milliliters (8 fl. oz.) or less. The mandatory statement required by § 16.21 shall be in script, type, or printing not smaller than 1 millimeter.

(c) *Labels firmly affixed.* All labels bearing the statement required by § 16.21 shall be affixed to containers of alcoholic beverages in such manner that they cannot be removed without thorough application of water or other solvents.

Subpart D—General Provisions**§ 16.30 Exports.**

The regulations in this part shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for export from the United States, or for delivery to a vessel or aircraft, as supplies, for consumption

beyond the jurisdiction of the internal revenue laws of the United States: *Provided,* That this exemption shall not apply with respect to alcoholic beverages that are produced, imported, bottled, or labeled for sale, distribution, or shipment to members or units of the Armed Forces of the United States, including those located outside the United States.

§ 16.31 Preemption.

No statement relating to alcoholic beverages and health, other than the statement required by § 16.21, shall be required under State law to be placed on any container of an alcoholic beverage, or on any box, carton, or other package, irrespective of the material from which made, that contains such a container.

Signed: January 13, 1989.

Stephen E. Higgins,
Director.

Approved: January 30, 1989.

John P. Simpson,
Acting Assistant Secretary (Enforcement).

[FR Doc. 89-3662 Filed 2-15-89; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Parts 4, 5, 7, and 16**

[Notice No. 678]

Implementation of the Alcoholic Beverage Labeling Act of 1988 (Pub. L. 100-690)—Health Warning Statement

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rulemaking cross referenced to temporary regulations.

SUMMARY: In the same separate part of this *Federal Register*, the Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing temporary regulations regarding the implementation of the Alcoholic Beverage Labeling Act of 1988, Title VIII of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690). These regulations require that a specific health warning statement appear on the labels of all alcoholic beverages. The temporary regulations also serve as the text of this notice of proposed rulemaking for final regulations.

DATE: Written comments must be received on or before April 3, 1989.

ADDRESS: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco, and Firearms, P.O. Box 385, Washington, DC 20044-0385, ATTN: Notice No. 678.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:**Executive Order 12291**

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has

determined that this proposal is not a major rule, because the economic effects flow directly from the underlying statute and not from this notice of proposed rulemaking. Therefore, it is found that this proposal will not result in:

(a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), it is hereby certified that these proposed regulations if adopted, are not likely to have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is imposed.

Public Participation

ATF requests comments from all interested persons concerning 27 CFR Part 16. In particular, ATF wishes to solicit comments on the "placement" issue. Specifically, in light of the statutory requirement that the health warning statement be located "in a

conspicuous and prominent place" on the container, should the warning statement be restricted to appearing on the brand (front) label?

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing on the temporary regulations. However, the Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

The temporary regulations in this issue of the *Federal Register* add new regulations in 27 CFR Part 16. For the text of the temporary regulations, see T.D. ATF-282 published in the same separate part of this issue of the *Federal Register*.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Signed: January 13, 1989.

Stephen E. Higgins,

Director.

Approved: January 30, 1989.

John P. Simpson,

Acting Assistant Secretary (Enforcement),

[FR Doc. 89-3661 Filed 2-15-89; 8:45 am]

BILLING CODE 4810-31-M

Register Federal

Thursday
February 16, 1989

Part VIII

Department of State

Bureau of Consular Affairs

22 CFR Part 44

Visas; Documentation of Immigrants Under Section 3 of Pub. L. 100-658; Final Rule

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 44

[SD-108.882]

Visas: Documentation of Immigrants Under Section 3 of Pub. L. 100-658

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This rule adds Part 44 to 22 CFR in order to implement section 3(a) of Pub. L. 100-658 which provides for the issuance of 10,000 visas per year during Fiscal Years 1990 and 1991 to prospective immigrants selected at random from among natives of "under-represented countries" defined in section 3(e) of Pub. L. 100-658 in accordance with a procedure established by section 3(b) of that law. This final rule favorably affects prospective immigrant visa applicants who may qualify under the separate annual numerical limitation of 10,000 visas made available during fiscal years 1990 and 1991 by Pub. L. 100-658.

EFFECTIVE DATE: February 16, 1989.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Opinions, Visa Office, Washington, DC 20520 (202) 663-1184.

SUPPLEMENTARY INFORMATION: On December 30, 1988, 53 FR 53003-006, the Department published a proposed rule adding Part 44 to 22 CFR. Comments were solicited for submission on or before January 27, 1989. The Department received three comments prior to the expiration of the comment period and received three further comments on Monday, January 30. Because the comment period included the New Year's holiday weekend and two other Federal holidays, the Department is treating the comments received on January 30 as having been timely submitted.

The first commenter did not comment upon the substance of the proposed regulations, but suggested rather that efforts should be made to collect and compile personal information such as age, sex, marital status, education, occupational background and training, etc., concerning the applicants. The commenter explained that such information could be of great use in the consideration of possible revision of the legal migration system since it would indicate patterns of demand for immigration to the United States not only by country but also in terms of the

personal characteristics of those seeking to immigrate. The Department recognizes the possible utility of such information for that purpose but cannot undertake a task of such magnitude without resources specifically dedicated to that effort. As no funds have been authorized or appropriated for the operational implementation of section 3 of Pub. L. 100-658, much less for any such data collection and compilation, the Department cannot entertain such a proposal. In addition, the Department notes that the information, if collected, might prove misleading since the thirteen highest immigration demand countries are excluded from participation in this program.

Two commenters submitted identical comments—the one submitted comments; the other submitted a copy of the first's comments with a covering letter endorsing them in toto. These two commenters suggested that the word "native" be defined so as to accomplish two things—(1) allow Northern Ireland to be treated as a part of the Republic of Ireland for the purposes of section 3; and (2) allow aliens of Irish ethnic origin born in the United Kingdom to compete. The Department finds both suggestions inconsistent with the plain language of both section 3 and the Immigration and Nationality Act. Moreover, the Department can find nothing of record to support the commenters' assertion that these suggestions reflect, or are consistent with, the intent of Congress in enacting section 3.

Although the first suggested change—treatment of Northern Ireland as part of the Republic of Ireland for this purpose—is presented in terms of modifying the definition of "native", it would involve in reality a change in the definition of "foreign state." Section 3(e) defines an under-represented country as a foreign state natives of which used fewer than 5,000 immigrant visa numbers during FY 1988. Section 3(d) provides that the definitions contained in the Immigration and Nationality Act shall apply in the administration of section 3 unless otherwise provided. There is nothing in section 3 regarding a definition of "foreign state" for this purpose. The term "foreign state" as defined in section 101(a)(14) and 202 of the Act includes independent countries, self-governing dominions, territories under League of Nations mandate and territories under the United Nations trusteeship system. Northern Ireland is none of the above. It is, and has always been, recognized by the United States as part of the United Kingdom and, accordingly, as provided in section 202, is treated as part of the United Kingdom for purposes of the numerical limitations

of immigration. The commenters refer to the separate treatment of Taiwan as a precedent for their suggestion. The separate foreign state limitation for Taiwan is the result of an Act of Congress—section 714 of Pub. L. 97-113. In the absence of a similar enactment in respect of Northern Ireland, there is no basis in law for acting upon this suggestion.

The second suggestion—that aliens of Irish ethnic origin born in the United Kingdom be treated as natives of Ireland for this purpose—is also inconsistent with the law. The commenters point out that their suggestion involves defining "native" in a manner than effectively defines a "native" of a foreign state as a national of that foreign state. National is a defined term in the Act and contains no reference to place of birth. The word "native," on the other hand, while not defined in the Act, is used only in connection with the provisions relating to chargeability for immigration purposes—section 202. It is clear from the context of that section that native is intended to apply only to aliens actually born in a foreign state or chargeable to that foreign state under the generally applicable rules of alternate foreign state chargeability set forth in section 202(b) of the Act.

Moreover, a review of prior immigration legislation indicates that in the past the Congress, when it intended to single out ethnic or racial groups for separate treatment under the immigration laws, has been very specific in doing so. The Act of December 17, 1943, which repealed the Chinese exclusion laws of the 1880s, established a quota for "Chinese persons" and the Act of July 2, 1946, defined a "Chinese person" as "any person who is as much as one-half Chinese blood". The "Chinese persons" quota was included in the original version of the Immigration and Nationality Act, but was repealed in 1965 as part of the general repeal of the "national origins" quota system. Similarly, in the Refugee Relief Act of 1953 the Congress provided for the issuance of fixed numbers of immigrant visas to a number of classes of aliens among whom were certain refugees of German ethnic origin, certain refugees and other persons of Italian ethnic origin, certain refugees of Greek ethnic origin, certain refugees and other persons of Dutch ethnic origin and certain refugees of Chinese ethnic origin. Thus, it is clear that the Congress, when it so intended, has been explicit in designating ethnic or racial groups for separate treatment under the immigration laws. Finding no such explicit designation in section 3, nor

even any indication that such a designation might have been intended, the Department finds no basis for incorporating one into its regulations implementing that section.

Two commenters asserted that § 44.3(c), as written, narrows the entitlement to derivative registration to exclude certain classes of children from this entitlement. It was not the Department's intention to do so. Rather, the purpose of the language in § 44.3(c) is to include in the derivative entitlement children born after the admission of a parent for permanent residence provided they are the issue of a marriage which existed at the time of the parent's admission. Children born as of the time of registration, visa issuance or admission for permanent residence are automatically included. Since these commenters interpreted the language in a manner other than that intended, it is possible that others may also do so. Accordingly, the Department is modifying the language of § 44.3(c) to make clear its intention.

Two commenters noted that the proposed rule does not deal with the submission of applications by attorneys in behalf of clients, specifically authorize the use of the attorney's address as the mailing address or otherwise recognize the role of an attorney in the application process. Both suggested amendments to the proposed regulations for that purpose. The Department considers it highly inappropriate to incorporate into these or any other visa regulations provisions of the kind suggested. As the public must by now be well aware, some visa applicants engage attorneys; others do not. As the public must also be aware, the Department of State takes no position on this phenomenon, merely recognizing it as a fact. Nowhere in the Department's published visa regulations are there provisions which address this fact and the Department can find no basis for incorporating any such provisions into Part 44.

Specifically, with respect to an applicant's use of the address of his or her attorney as the mailing address for this purpose, the Department emphasizes that it has no concern with this issue. The requirement for a current mailing address on the petition is included solely and exclusively to ensure that notification of selection will reach those applicants selected. The mailing address may be the residential address, the place of business, a post office box, the address of a friend, relative or legal representative or any other mailing address at which the applicant can be assured that

correspondence addressed to him or her will be received.

Two commenters suggested that the Department make specific provision for the use of INS Form G-28, Notice of Appearance of Attorney. As practitioners generally must be aware, the Department does not require the use of Form G-28 in the visa process generally. Standing instructions to consular officers are that an assertion by a member of the bar that he or she represents a visa applicant is accepted at face value in the absence of specific evidence controverting the assertion. While some practitioners use Form G-28 for this purpose, that is a matter of personal choice on their part and is not based on any requirement established by the Department. The Department can find no basis for establishing a different rule or standard in connection with the implementation of section 3 of Pub. L. 100-658.

One commenter noted that the use of the word "petition" is confusing since under the immigration law generally that word has come to mean a government-developed printed form bearing a form number and providing blank spaces to insert specified information. The commenter suggested use of another word. Substantively, the point is well made. On the other hand, the Department has no alternative but to use the word since the express language of the statute requires the filing of a "petition" by applicants for visas under section 3 of Pub. L. 100-658. It is for that reason that the Department felt it necessary to provide a specific definition of petition in proposed § 44.2(a). The potential for confusion indeed exists but, if the proposed definition does not serve to eliminate the potential confusion, the Department cannot legally take the matter further.

One commenter suggested that Federal Express mail be accepted, explaining that Federal Express mailings have their own receipt built into the system. The Department will not accept Federal Express mailings because, even though the receipt is an integral part of the mailing itself, that is not the issue. The issue is that a representative of the addressee must sign the receipt to acknowledge receipt. Given the mail handling procedures which will be employed by the USPS in this situation, the signature would have to be obtained at the time of delivery of the piece of mail. This would require that an officer of the Department be available at the post office for this purpose, or travel to the post office for this purpose from time to time. The Department is not in a position to do either. In addition, as will

be explained below, the mailing envelope used for Federal Express mailing is of a size which cannot be accommodated in the processing system developed in cooperation with the United States Postal Service. For those reasons, the Department will not accept Federal Express mailings.

Two commenters suggested that provision be made for notifying not only the applicant selected but also, if that applicant has an attorney, the attorney as well. The Department will not be notifying any of the selected applicants. The Department will transmit to the consular office indicated by the selected applicant the information necessary to permit that office to commence the normal immigrant visa process. No special rules will be established for the processing of these applicants. It has been the Department's position that, if a visa applicant requests that both he or she and the attorney be sent copies of any pertinent communications concerning the processing of the alien's application, the consular office will honor that request. This rule will apply here as well.

One commenter asserted that having a single application period, as proposed, might be unfair to aliens who might not hear of the application period in a timely manner or who might not form a desire to compete for immigration until after the period had ended. He proposed that there be a short application period every quarter throughout the entire two-year period. The logistical problems involved in establishing multiple application periods throughout the entire two-year period make it impossible for the Department to consider such a procedure.

One commenter suggested that the regulations be expanded to include a definition of the word "native", to provide for and explain the rules for alternate foreign state chargeability as they would apply to the spouse or child of a selected applicant, and to list by name the foreign states and dependent areas excluded from participation in the program. The word "native" has the same meaning here as elsewhere in the immigration law, as has been explained above. It thus reflects the generally applicable rule that, for purposes of the numerical limitations on immigration, an alien is chargeable to the foreign state in which he or she was born. This generally applicable rule is incorporated into proposed Part 44 by reference—see § 44.1—and the Department finds it unnecessary to expand the regulations for this purpose. Similarly, the rules of alternate foreign state chargeability are incorporated by reference in the same

section. The Department is incorporating into § 44.3(a) a specific listing of the foreign states and dependent areas excluded from participation.

Two commenters questioned whether more than one member of a family group could apply without violating the single application per person rule and one indicated that the requirement that each applicant provide information about his or her spouse and children, if any, was confusing on this point. The single application rule is violated only by the submission of two or more applications by any one alien. Submission of one application each by a husband, a wife, and each of their children does not in any way violate the single application per person rule. Treatment of each member of a family group as a person for this purpose is consistent with the rule which applies throughout the administration of the immigration law generally. The spouse or child of an alien who has qualified for an immigrant or nonimmigrant status under the law may, with certain exceptions, qualify for that status derivatively. On the other hand, the existence of the derivative entitlement in no way precludes a spouse or child from qualifying for the same or another nonimmigrant or immigrant status in his or her own right. The Department believes that it would be inconsistent with this clear principle to apply any different rule here.

Two commenters suggested that the applications be treated as confidential and not be used for any other purpose, including enforcement or administration of the immigration laws other than section 3. They asserted that failure to provide such confidentiality might deter aliens illegally in the United States from applying out of a fear that their application might disclose their whereabouts to the Immigration and Naturalization Service. They cite as precedent for such action the confidentiality provided for applications for legalization. Section 222(f) of the Act specifies that the records of the Department of State and of diplomatic and consular offices pertaining to the issuance or refusal of visas shall be confidential and shall be used only for the formulation, administration, and enforcement of the immigration and other laws of the United States. There is nothing in Pub. L. 100-658 which would provide any further degree of confidentiality than that provided by section 222(f). The absolute confidentiality of legalization applications was mandated by statute. In the absence of any comparable statutory mandate, the Department will

follow the generally-applicable rule which is that information from visa files which is of interest to United States law enforcement agencies may be made available to those agencies for legitimate law enforcement purposes. While the Department cannot say whether the Immigration and Naturalization Service might have an interest in these applications in its enforcement activities, the Department wishes it clearly understood that it will cooperate with that Service should it find that it has such an interest.

Two commenters expressed the fear that applications by two people having the same name might somehow be seen as having been submitted by the same individual and, thus, be unfairly eliminated from competition. The Department believes that this possibility will be eliminated by the requirement that the applicant's current mailing address, as well as his or her name, be typed on the mailing envelope. One of these commenters also expressed the fear that two applicants might have the same name and the same mailing address and suggested that each applicant be required to type his or her date and place of birth on the envelope to deal with that situation. The Department considers this latter possibility to be so remote as not to require such precautions.

Finally, one commenter suggested that the announcement of the application period be made at least thirty days before the commencement of the period. The Department is currently making public announcements of the application period, both within the United States and abroad, but for the reasons explained below is unable to do so a full thirty days before it commences.

The Department now wishes to explain in detail the procedure which will be followed in processing the applications received during the application period and in selecting at random from among them. The Department has obtained the cooperation of the United States Postal Service in formulating these procedures and wishes to take this opportunity to thank that Service for its cooperation. USPS has assigned a special Zip Code for this purpose. *Thus, as is reflected in section 44.3(b), the mailing address for applications will be: OP-1, P.O. BOX 20199, WASHINGTON, D.C., 20199-9998.*

USPS has a machine which numbers envelopes serially. USPS has agreed that, as envelopes are received, it will stamp a serial number on each envelope and will deliver the envelopes to the

Department in containers in which the envelopes will be arranged in serial number order. This will greatly facilitate finding those envelopes bearing the numbers selected at random following the end of the application period. *One constraint imposed by this procedure is that the USPS machine will not process envelopes larger than 9 & 1/2 by 4 & 1/2 inches (approximately 24 cm by 11 cm) and smaller than 6 by 3 & 1/2 inches (approximately 15 cm by 9 cm). Accordingly, section 44.3(b) has been modified to specify that the envelope in which the application is mailed must be of a size within that range.*

Also, in response to a request by USPS, the Department is adding a requirement that the address be typed on the envelope. In addition, the Department is requiring that the applicant's name and return address be typed on the envelope.

The application period will be March 1, 1989, through March 31, 1989, inclusive. All envelopes received during that period which otherwise meet the requirements specified will be numbered as described above and included among the envelopes potentially eligible for selection. Envelopes received prior to March 1, 1989, and after March 31, 1989, will not be included among those eligible for possible selection. The Department had initially considered holding the application period during the month of April, as is reflected in the discussion of the proposed rule. USPS, however, requested that the application period not be held in April because of the heavy burden it will face around April 15, the deadline for filing income tax returns. Since the Department consider May to be unacceptably late in the fiscal year, March is the only feasible month for the application period.

Once the application period has ended, the Department will program a computer, using standard computer software for this purpose, to rank order all numbers. The Department will then print out an appropriate quantity of the numbers for actual selection and processing. The Department envisions printing 40,000 numbers. The envelopes bearing those numbers will be removed from the containers and opened. As explained previously, the computer-generated rank order will determine the order of processing and will serve the same function as a chronological priority date serves for preference immigrants under section 203(a) of the Act. The information concerning the selected applicants, including the rank order number, will be entered into a

computer data base and the information will then be printed out and sent to the consular office indicated by the applicant. That consular office will, upon receipt of the information, initiate the normal immigrant visa processing steps.

The Department wishes to emphasize that notifications of selection will be sent to applicants selected by the consular office designated by the applicant. The Department itself will not send such notifications. Moreover, the Department will not be in a position to respond to inquiries as to whether or not individual applications were received during the application period. The envelopes of those not selected will be retained for an appropriate period and eventually destroyed, but no records will be made or compiled of non-selected applicants.

In conclusion, the Department wishes to point out two technical matters of potential interest. First, it should be noted that the use of rank order numbers in the administration of the numerical limitation in section 3, as provided in section 44.5, will have the effect of allowing aliens in the United States who have been selected under this program to apply for adjustment of their status rather than for an immigrant visa at a consular office abroad, provided that they are not prohibited from applying for adjustment of status generally under section 245(c) of the Act.

Second, the prohibition contained in section 203(a)(7) of the Act against the issuance of a nonpreference immigrant visa to an unaccompanied minor alien under the age of sixteen will apply in the administration of section 3. Thus, while such an alien is not prohibited from applying for selection under the program, he or she could not be issued a visa if selected.

This rule is not considered to be a major rule for purposes of E.O.12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 22 CFR Part 44

Aliens, Immigration, Nonpreference immigrants, Visas.

In view of the comments received this final rule adopts the proposed rule with certain modifications as indicated in the preamble. Accordingly Title 22, Code of Federal Regulations, is amended by adding Part 44 to Chapter I, Subchapter E-Visas, to read as follows:

PART 44—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER SECTION 3 OF PUB. L. 100-658.

Sec.

- 44.1 General.
- 44.2 Definitions.
- 44.3 Registration of applicants.
- 44.4 Selection and processing of registrants.
- 44.5 Control of numerical limitation.
- 44.6 Eligibility to receive a visa.

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847; Sec. 314, 100 Stat. 3359, 8 U.S.C. 1153 Note; Sec. 3, 102 Stat. 3908, 8 U.S.C. 1101 Note.

§ 44.1 General.

Except as specifically provided in this Part, the provisions of the INA, as amended, and of Parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 3 of Pub. L. 100-658.

§ 44.2 Definitions.

The following definitions shall be applicable to this Part:

(a) "Petition" shall mean any typewritten document using the Roman alphabet and containing the name of the alien, the alien's date and place of birth, the alien's current mailing address, the location of the consular office nearest to the alien's residence abroad or, if the alien is in the United States, to the alien's last residence abroad prior to entry into the United States, and the name, date and place of birth of the alien's spouse and child or children (if any), to which shall be affixed a photograph of the alien 1 & 1/2 inches—3.8 cm—square showing a recent full-face likeness against a light background (black and white or color), as well as a separate photograph of a spouse and each child, if any.

(b) "Under-represented country" shall mean any foreign state, as defined in section 101(a)(14) of the Immigration and Nationality Act, as amended, natives of which used less than 5,000 immigrant visa numbers under INA 203(a) during Fiscal Year 1988. Immigrant visa numbers used by aliens under section 314 of Pub. L. 99-603 during Fiscal Year 1988 shall not be counted for this purpose. Usage of immigrant visa numbers by foreign states shall be determined from the records of the Visa Office of the Department of State. For the purposes of this Part, a dependent area, as defined in 22 CFR 40.1(f), shall be considered to be a part of its governing foreign state.

§ 44.3 Registration of applicants.

(a) *Limitations on registration.* An alien shall not be eligible to register under this section unless the alien is a

native of an under-represented country as defined in § 44.2(b) of this Part. All foreign states and dependent areas for immigration purposes are under-represented except the following—China-mainland born, China-Taiwan born, Colombia, the Dominican Republic, El Salvador, the United Kingdom (including the dependent areas of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Montserrat, Pitcairn, St. Helena, and Turks and Caicos Islands), Guyana, Haiti, India, Jamaica, Korea, Mexico, and the Philippines. Petitions from aliens seeking to register will be accepted only from March 1, 1989 until March 31, 1989. Applications received before or after those dates will not be considered. If the Department thereafter determines that it is necessary to establish a further period for registration in order to ensure that the number of qualified applicants is sufficient to permit allocation of all immigrant visa numbers authorized by section 3 of Pub. L. 100-658, the Department will so provide by Public Notice in the Federal Register.

(b) *Place of registration.* An alien who is a native of an under-represented country who desires to register as an applicant for a visa under section 3 of Pub. L. 100-658 shall submit a petition in a separate envelope by mail to: OP-1, P.O. Box 20199, Washington, D.C., 20199-9998. The envelope used for mailing the application must be not larger than 9 & 1/2 by 4 & 1/2 inches (approximately 24 cm by 11 cm) and not smaller than 6 by 3 & 1/2 inches (approximately 15 cm by 9 cm) in size. Petitions shall not be accepted for this purpose by any means other than by mail nor at any address other than the one specified in the preceding sentence. All petitions shall be submitted by regular domestic or international surface or airmail. Petitions submitted by any means requiring any form of written acknowledgement or confirmation of receipt will not be given consideration. All envelopes submitted for this purpose shall bear on the outside thereof, clearly typewritten and in the Roman alphabet, the name and current mailing address of the applicant as they are typed on the petition contained therein.

(c) *Derivative registration.* A petition submitted in accordance with § 44.3 (a) and (b) shall be considered to include automatically the spouse or child of the applicant, whether or not such spouse or child is named in the petition, if, in the case of a spouse, the marriage to the applicant took place prior to the applicant's admission to the United

States for permanent residence. The petition shall also be considered to include a child born after the admission of the parent for permanent residence if the child is the issue of a marriage which took place prior to the applicant's admission to the United States for permanent residence.

§ 44.4 Selection and processing of registrants.

(a) *Selection.* All envelopes received at the mailing address specified in § 44.3(b) during the period specified in § 44.3(a) and bearing the name and address of the petitioner as specified in § 44.3(b) shall be assigned a number in order of receipt. Envelopes received prior or subsequent to the specified period and those not bearing the name and mailing address of the petitioner shall be set aside without further processing or consideration. Upon completion of the numbering of all envelopes, all numbers assigned shall be rank-ordered at random by a computer using standard computer software for this purpose. A quantity of envelopes sufficient to permit the processing and issuance of all immigrant visas authorized under section 3 of Pub. L. 100-658 shall then be selected in rank order as determined by the computer program. Any alien in whose name two or more petitions for this purpose are submitted shall be disqualified from consideration for registration or selection under this section.

(b) *Processing.* Upon selection of the envelopes pursuant to the provisions of

§ 44.4(a), the envelopes shall be opened and the applicant assigned the rank order number determined by the computer program. The information concerning the applicants selected, including the applicant's rank order number, shall be transmitted to the consular office named in the petition. Thereafter, the consular office shall process the application in accordance with the applicable provisions of Part 42 of this chapter and § 44.5 and § 44.6 of this Part.

§ 44.5 Control of numerical limitation.

(a) *Centralized control.* Centralized control of the numerical limitation specified in section 3 of Pub. L. 100-658 is established in the Department of State. In order to effect this control, the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 3 of Pub. L. 100-658 to a number not to exceed 10,000 each in Fiscal Years 1990 and 1991 and not to exceed, in any month of either such fiscal year, 1,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Notification of applicants.* Consular officers shall notify applicants to take the steps necessary to meet the requirements of INA 222(b) in order to apply formally for a visa upon notification from the Department that the applicants have been selected as provided in § 44.4.

(c) *Reports of applicants ready to apply formally for a visa.* Consular officers shall report to the Department monthly, or at such other intervals as the Department may direct, the rank order numbers of applicants notified pursuant to § 44.5(b) who have informed the consular office that they have obtained the documents required under INA 222(b), and for whom the necessary clearance procedures have been completed.

(d) *Allocation of immigrant visa numbers.* Within the numerical limitations specified in § 44.5(a), the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status based on the rank order numbers of visa applicants reported by consular officers pursuant to § 44.5(c) and of applicants for adjustment of status reported by officers of INS.

§ 44.6 Eligibility to receive a visa.

The eligibility of an applicant for a visa under section 3 of Pub. L. 100-658 shall be determined as provided in the INA, as amended, and in Parts 40 and 42 of this chapter except that the provisions of INA 212(a)(14) shall not apply in determining an alien's eligibility for such visa.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 89-3771 Filed 2-15-89; 8:45 am]

BILLING CODE 4710-06-M

Reader Aids

Federal Register

Vol. 54, No. 31

Thursday, February 16, 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, FEBRUARY

5071-5206	1
5207-5404	2
5405-5582	3
5583-5920	6
5921-6114	7
6115-6262	8
6263-6380	9
6381-6502	10
6503-6640	13
6641-6860	14
6861-7028	15
7029-7170	16

CFR PARTS AFFECTED DURING FEBRUARY

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.

1 CFR

305	5207, 6861
310	6861

3 CFR

Administrative Orders:

Memorandums	
Dec. 22, 1988	6237
Presidential Determinations:	
No. 89-10 of	
Jan. 18, 1989	5071

5 CFR

Proposed Rules:

550	5494
890	7039

7 CFR

1	5073
26	5921
68	5923
271	6990
272	6990
273	6990
274	6990
275	6990
276	6990
405	6381
800	5924
802	5925
905	5405, 5583
907	5406, 6503
910	5407, 6381
919	5584
932	5585
959	6862
981	5408, 6863
1006	6382
1012	6382
1013	6382
1124	5587
1125	5587
1150	6263
1413	6232
1700	6867
1709	6867
1735	5925
1822	6873
1924	6874
1955	6874
1965	6874
1980	5409
3017	6363

Proposed Rules:

29	5494
58	6881
905	6136
1933	6532
1944	6532
1980	6417

8 CFR

101	5927
103	6875
235	6365
245a	6504

9 CFR

201	5073
307	6388
350	6388
351	6388
352	6388
354	6388
355	6388
362	6388
381	6388
391	6388

Proposed Rules:

92	5089
113	5939
307	6684
310	6684

10 CFR

62	5409
70	6876
74	6876
430	6062
1036	6363

Proposed Rules:

20	5089, 6296
50	6935
430	6364
600	6296
710	5376

11 CFR

110	6684
113	6684
114	6684
116	6684

12 CFR

208	6115
516	6363
525	6112
569c	6109
578	6108
615	5074, 6118, 6264, 7029
618	5074
624	6265

Proposed Rules:

229	5495
543	5629
544	5629
545	5629, 6685
546	6685
552	5629
561	6685
563	6685

563b.....	6685	Proposed Rules:	125.....	6492	1904.....	7056
563c.....	6685	410.....	904.....	6886	33 CFR	
570.....	6685	19 CFR	905.....	6886	100.....	5432, 6392, 6519
571.....	6685	Ch. I.....	913.....	6886	117.....	7032
584.....	6689	4.....	960.....	6886	165.....	5432
13 CFR		122.....	966.....	6886	173.....	5608
101.....	6512	148.....	25 CFR		174.....	5608
108.....	6265	162.....	2.....	6478	207.....	6519
121.....	6267, 7029	178.....	26 CFR		334.....	6519, 7033
123.....	6268	207.....	1.....	5577	Proposed Rules:	
142.....	6271	356.....	601.....	6363	334.....	7065
145.....	6363	Proposed Rules:	Proposed Rules:		34 CFR	
Proposed Rules:		134.....	1.....	5577, 5939, 6710	60.....	7148
121.....	6298	141.....	53.....	6060	73.....	6364
14 CFR		152.....	56.....	6060	85.....	6363
39.....	5928, 6118, 6281, 6365, 6391, 6512, 6514, 6641, 6642, 6878	162.....	27 CFR		222.....	6858
71.....	5214-5219, 5929	178.....	4.....	7160	Proposed Rules:	
73.....	6879	353.....	5.....	7160	379.....	6808
75.....	6879	20 CFR	7.....	7160	35 CFR	
91.....	5580	204.....	16.....	7160	253.....	6364
97.....	5587, 6515	235.....	Proposed Rules:		36 CFR	
241.....	5588	302.....	4.....	7164	211.....	6891
1203.....	6880	337.....	5.....	7164	217.....	6891
1265.....	6363	404.....	7.....	7164	228.....	6892
Proposed Rules:		Proposed Rules:	16.....	7164	251.....	6891, 6892
Ch. I.....	5637	219.....	28 CFR		1190.....	5434
39.....	5637, 6549, 6689-6692	422.....	67.....	6363	1209.....	6363
71.....	5246, 6233, 6301, 6935	21 CFR	Proposed Rules:		Proposed Rules:	
399.....	5497, 6475	5.....	34.....	6098	Ch. VII.....	6553
15 CFR		10.....	29 CFR		222.....	6425
26.....	6363	107.....	1.....	5303	37 CFR	
770.....	6643	133.....	5.....	5303	1.....	6893
771.....	6643	178.....	98.....	6363	2.....	6893
772.....	6643	179.....	1471.....	6363	10.....	6520, 6659
773.....	6643	182.....	1910.....	6886	Proposed Rules:	
774.....	6643	211.....	1915.....	6886	1.....	6936
775.....	6643	338.....	1917.....	6886	211.....	5942
776.....	6643	510.....	1918.....	6886	38 CFR	
777.....	6643	520.....	1926.....	6886	1.....	6520
16 CFR		522.....	1928.....	6886	2.....	5610
13.....	5929	524.....	2610.....	6888	3.....	5235, 5610
305.....	6517	529.....	2676.....	6889	4.....	7067
1031.....	6646	546.....	2704.....	6284	8.....	5931
1032.....	6646	555.....	Proposed Rules:		14.....	5610, 5613
Proposed Rules:		556.....	530.....	5303, 5500	19.....	5610
13.....	6141	558.....	1602.....	6551	44.....	6363
414.....	5090	880.....	1627.....	6551	Proposed Rules:	
436.....	7041	892.....	30 CFR		21.....	5640, 5944, 5945
17 CFR		Proposed Rules:	5.....	6365	39 CFR	
4.....	5597	50.....	Proposed Rules:		111.....	6911
231.....	5600	56.....	250.....	6302	Proposed Rules:	
241.....	5600	106.....	761.....	5577	111.....	5641
Proposed Rules:		163.....	925.....	6423	40 CFR	
1.....	5576	310.....	935.....	5940	32.....	6363
3.....	5576	343.....	31 CFR		52.....	5236, 5448, 5449, 6125, 6286, 6287, 6912, 7034
31.....	5576	369.....	19.....	6363	60.....	5078, 6660
145.....	5576	630.....	500.....	5229	61.....	5078
147.....	5576	1310.....	515.....	5229	81.....	5237
240.....	6693	1313.....	32 CFR		82.....	6376
250.....	6701	22 CFR	199.....	5604	149.....	6836
259.....	6701	44.....	280.....	6363	162.....	6288
18 CFR		137.....	286b.....	5235	180.....	5079, 5080, 6126-6130, 6392, 6915-6918
157.....	6120	208.....	351.....	5607	185.....	6129, 6130
201.....	5424	310.....	366.....	7031	186.....	6130
271.....	5075	513.....	367.....	6890	261.....	5081
284.....	5219	1006.....	Proposed Rules:			
381.....	5424	1508.....	169.....	5640		
		Proposed Rules:				
		503.....				
		24 CFR				
		24.....				

262.....	7036
271.....	6290, 6396
280.....	5451
300.....	6521
704.....	5197, 6918

Proposed Rules:

52.....	5083, 5247, 5249, 6302, 6307, 6430, 6936, 7068, 7069
60.....	5302, 6850
81.....	6733
180.....	5502, 6151, 6937
257.....	5746
271.....	5500
300.....	6153
503.....	5746

41 CFR

101-17.....	6291
101-50.....	6363
105-68.....	6363

Proposed Rules:

201-1.....	5904, 5905
201-2.....	5905
201-6.....	5905
201-7.....	5904
201-8.....	5905
201-11.....	5905
201-16.....	5904
201-23.....	5904, 5905
201-24.....	5904, 5905
201-30.....	5904, 5905
201-32.....	5904, 5905
201-38.....	5904, 5905
201-39.....	5905
201-40.....	5904, 5905
201-41.....	5905

42 CFR

57.....	5615
413.....	5316, 5619
433.....	5452
442.....	5316
447.....	5316
483.....	5316
488.....	5316
489.....	5316
498.....	5316

Proposed Rules:

405.....	5946
415.....	5946

43 CFR

4.....	6483
12.....	6363

Public Land Orders:

3708.....	6919
6696.....	5302
6706.....	6232
6707.....	5932
6708.....	6919
6709.....	6919

Proposed Rules:

11.....	5093
---------	------

44 CFR

17.....	6363
64.....	5462, 6522
65.....	5238, 5239
67.....	5240, 6920

Proposed Rules:

67.....	5971, 5979
---------	------------

45 CFR

76.....	6363
400.....	5463

620.....	6363
670.....	7132
1080.....	6368
1154.....	6363
1169.....	6363
1185.....	6363
1229.....	6363
2016.....	6363

Proposed Rules:

670.....	7071
704.....	5504

46 CFR

25.....	6396
58.....	6396
147.....	6396
184.....	6396
221.....	5382
252.....	5085
282.....	5086

Proposed Rules:

31.....	5642
71.....	5642
91.....	5642
550.....	5253, 5506
580.....	5506
581.....	5506

47 CFR

25.....	5483
69.....	6292
73.....	5243-5245, 5623, 5624, 5932, 5933, 6132-6134, 6294, 6930
97.....	5933

Proposed Rules:

73.....	5979-5983, 6154, 6155, 6307, 6308, 6939
---------	--

48 CFR

52.....	6931
204.....	5484
219.....	5484
552.....	6931
1828.....	7037
1837.....	5625
1852.....	7037

Proposed Rules:

25.....	6251
52.....	6251
505.....	5516
509.....	6308
552.....	6308
1515.....	7072
1552.....	7072

49 CFR

29.....	6363
192.....	5484, 5625
195.....	5625
218.....	5485
1312.....	6403
1314.....	6403

Proposed Rules:

392.....	5516
393.....	5516
396.....	5518
544.....	5519

50 CFR

17.....	5935
380.....	6407
611.....	6524, 6932
646.....	5938
652.....	6415
672.....	6524

675.....	6134, 6934
683.....	6531

Proposed Rules:

17.....	5095, 5983, 5986
18.....	6940
672.....	6734

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List February 10, 1989

Code of Federal Regulations

Revised as of October 1, 1988

Quantity	Volume	Price	Amount
	Title 47—Telecommunication		
	Parts 40-69 (Stock No. 869-004-00174-6)	\$9.00	\$
		Total Order	\$

Please do not detach

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402



Total charges \$_____ Fill in the boxes below.

							-	
--	--	--	--	--	--	--	---	--

[illegible]

Expiration Date

--	--	--	--

Month/Year

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		