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Tuesday
March 21, 1989

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WHERE: State Office Building Auditorium, Capitol Hill, Salt Lake City, UT
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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.

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Presidential Documents

Title 3—

The President

Proclamation 5942 of March 17, 1989

National Day of Prayer, 1989

By the President of the United States of America

A Proclamation

Throughout our Nation's history, Americans have been a prayerful people, giving thanks to our Creator for the blessings of liberty and seeking His help and guidance in preserving them.

Those who braved the long ocean journey from Europe to first settle in the American colonies were men and women of varied, but equally devout, religious beliefs. Many had been persecuted for those beliefs at home, and they sought a new land where they might be able to worship freely. Years later, our forefathers would clearly remember this and begin our Bill of Rights with the guarantee that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

But it was not just the experience of their ancestors that led the Founding Fathers to shape a free and democratic government for our Nation. On the contrary, their view of the rights of man and the proper role of government were derived from their firm faith in God. They believed that all men are created equal, "endowed by their Creator with certain unalienable Rights." Any system of government they established must guarantee individual liberty and equality before the law, for freedom is the God-given right of all men. Calling for daily prayer at the Constitutional Convention, a number of delegates expressed their conviction that only with divine guidance would the new democracy be true and successful. "If a sparrow cannot fall to the ground without His notice," observed Benjamin Franklin, "is it probable that an empire can rise without His aid?" Dr. Franklin knew that human wisdom alone could neither build nor keep a free and just government.

As our first President, George Washington would continue to pray for guidance from "that powerful Friend" invoked by Ben Franklin. "I shall take my present leave," said the new President, "but not without resorting once more to that benign Parent of the Human Race in humble supplication that . . . His blessing may be equally conspicuous in the enlarged views, the temperate consultations and the wise measures on which the success of this government must depend." Immediately after his Inauguration, President Washington made his way with the Congress through the crowds of well-wishers from Federal Hall to Saint Paul's chapel. There a prayer service was offered by the Chaplain of Congress for our new Nation.

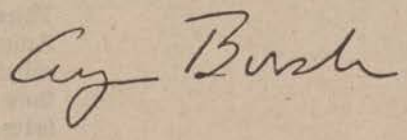
The great faith that led our Nation's Founding Fathers to pursue this bold experiment in self-government has sustained us in uncertain and perilous times; it has given us strength and inspiration to this very day. Like them, we do well to recall our "firm reliance on the protection of Divine Providence," to give thanks for the freedom and prosperity this Nation enjoys, and to pray for continued help and guidance from our wise and loving Creator. For what President Washington wrote 200 years ago remains true today: "the liberty enjoyed by the people of these States, of worshipping Almighty God agreeably to their consciences, is not only among the choicest of their blessings, but also of their rights."

Since the approval of the joint resolution of the Congress on April 17, 1952, calling for the designation of a specific day to be set aside each year as a

National Day of Prayer, recognition of such a day has become a cherished annual event. Each President since then has proclaimed a National Day of Prayer annually under the authority of that resolution, continuing a tradition that actually dates back to the Continental Congress, which issued the first official proclamation for a National Day of Prayer on July 12, 1775. By Public Law 100–307, the first Thursday in May of each year has been set aside as a National Day of Prayer.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 4, 1989, as a National Day of Prayer. I invite the people of this great Nation to gather together on that day in homes and places of worship to pray, each after his or her own manner, for unity in the hearts of all mankind.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89–6825
Filed 3–20–89; 10:39 am]
Billing code 3195–01–M

Presidential Documents

Proclamation 5943 of March 18, 1989

National Agriculture Day, 1989

By the President of the United States of America

A Proclamation

American agriculture is a vital resource for the world. People around the globe share in our harvests—and our prayers for bountiful crops each year.

Our country is blessed with fertile land, a benevolent climate, and generations of skilled farmers who have the will and the capacity to provide enough food and fiber for this Nation and for much of the rest of the world as well.

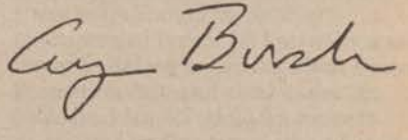
As the most efficient agricultural producers in history, Americans appreciate the value of technological and scientific advances in agriculture. We understand the need to conserve soil and water, and to protect the environment.

Today, Americans are determined to build on this proud heritage of productive agriculture. We are determined to promote the industry and commerce that enable our crops to reach and remain competitive in markets at home and abroad.

In recognition of the role of agriculture in our daily life and our life as a Nation, the Congress, by House Joint Resolution 117, has designated March 20, 1989, as "National Agriculture Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim March 20, 1989, as National Agriculture Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-6826
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Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. CS-88-022]

7 CFR 180

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service USDA.

ACTION: Final rule.

SUMMARY: This action amends the regulations under the Plant Variety Protection Act of 1970, as amended, to increase the fees charged for plant variety protection certification services. The increased fees are necessary to more accurately reflect the costs of the services and to make administration of the program substantially self-supporting.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Commodities Scientific Support Division, AMS, National Agricultural Library Building, Room 500, Beltsville, Maryland 20705, telephone: (301) 344-2518.

SUPPLEMENTARY INFORMATION: .

Executive Order 12291

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be "non-major." It will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor will it have a significant effect on competition, employment, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Certification Under the Regulatory Flexibility Act

The Administrator of the Agricultural Marketing Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq), because (1) the fee represents a minimal increase in the costs of developing and producing a new variety for the commercial market; and (2) competitive effects are offset under this voluntary program since charges are based on volume (i.e., the cost to users of plant variety protection services varies in proportion to the number of applications submitted).

Paperwork Reduction Act

This final rule contains no new or amended recordkeeping, reporting, or application requirements or any type of information collection requirement subject to the Paperwork Reduction Act of 1980.

Background

The Plant Variety Protection Act of 1970, as amended, (7 U.S.C. 2321 *et seq*) provides for the assessment and collection of reasonable fees for expenses incurred by the Department of Agriculture in the issuance of plant variety protection certificates and for related services. The Act has recently been amended to provide that fees, including late payments and accrued interest, shall be credited to the account that accrues the costs and shall remain available without fiscal year limitation to pay the costs incurred. Present fees will not cover projected costs. Therefore, the Department is (1) increasing the total fees for processing an application to $2,400 and (2) adjusting the schedule of other fees to more accurately reflect the costs incurred by the Department for providing different services under the Act.

From fiscal year 1981 to fiscal year 1984, the cost of processing an application was reduced from approximately $3,600 to $2,000; and fees were increased from $750 to $2,000 to make the program fully user-funded. From the time of the 1984 fee increase to fiscal year 1988, operating costs attributed to the program rose 35 percent. Although the plant variety protection program has made significant efficiency improvements, costs of administering the program continue to be in excess of revenues.

On September 22, 1987, the Plant Variety Protection Advisory Board (Board) met and was provided information concerning increased costs expected to be incurred by the Department in processing an application for a plant variety protection certificate during fiscal year 1988. This information formed the basis for the Plant Variety Protection Office's fee increase recommendation. The Board unanimously recommended that fees not be raised at this time. The Department acknowledged the Board's recommendation and responded to its concerns in the proposed regulation concerning increased fees.

Comments Received

On July 15, 1988, the Agricultural Marketing Service published in the **Federal Register** (53 FR 26781) a proposed rule adjusting the fees for plant variety protection certification services with a 30-day comment period ending August 15, 1988. The Agency received one letter from the American Seed Trade Association, Inc. (ASTA) in response to the proposed rule.

ASTA, in response to the Federal Register notice, opposed the fee increase. Specifically, ASTA argued that: (1) Congress did not intend the program to be fully fee funded. (2) Overhead expenses should not be figured in fees charged. (3) The program provides a public benefit and therefore some costs should be paid by appropriated funds. (4) Patent fees are lower than fees under the Plant Variety Protection Act, and even under the increased fee schedule for patents developed by Congress, administrative overhead expenses are not included. (5) Efforts to enlarge the databases in the Plant Variety Protection Office are "time-consuming, often wasted, and frustrating," and are often directed to varieties not subject to plant variety protection. Applicants should not be required to pay the costs associated with such efforts. It was also suggested that Board-recommended alternatives were not implemented.

In its comments, ASTA argued that Congress did not intend for fees to fund

the full cost of the program and that overhead expenses should not be charged to the program, but should instead, be paid in part by appropriated funds. We do not agree with this interpretation of the Statute. Section 31 of the Plant Variety Protection Act (7 U.S.C. 2371) provides that the Secretary of Agriculture shall charge and collect reasonable fees for services performed under the Act. The legislative history of the Act indicates that the Plant Variety Protection program should be primarily self-financing, with the possible exception of some administrative costs in setting it up.

ASTA also pointed out that plant variety protection fees are higher than patent fees, that the Patent Office does not intend to recover full costs until 1996, and that amount will not include administrative costs. It is true that plant variety protection fees are higher than initial patent fees, but this is due in part to the expense of the search that must be conducted by the Plant Variety Protection Office to determine whether a sexually-reproducing variety is indeed novel. No comparable search is conducted by the Patent Office. Also, the Patent Office requires the applicant to pay maintenance fees and to store seed in an approved storage facility at the applicant's expense, both of which substantially increase the cost of a patent in the long run. In contrast, no maintenance or seed storage fees are charged separately under the Plant Variety Protection Act.

In objecting to the expansion of the Plant Variety Protection Office computer database, ASTA questioned the wisdom and practicality of such expansion. ASTA indicated that 17 years of developing the database should have been more than enough, and that applicants should not be required to pay the significant costs involved in fruitless exercises. ASTA also indicated that efforts toward obtaining information about varieties not subject to the Act are inappropriate.

In order to properly carry out their functions under the Act, examiners in the Plant Variety Protection Office must continually update their knowledge of plant varieties (whether or not they are subject to the Act), and maintain a database which is complete, accurate, and current. Recently described plant varieties and recently discovered or described plant characteristics must therefore be constantly added to the database.

The scientific community continues to identify useful descriptive characters that assist in showing the novelty of varieties. The examiners must remain informed of the new, identifying characters as well as descriptions of existing varieties for the new characters. Reports on the classification of barley cultivars by electrophoresis is an example of recent developments in differentiating varieties. The Plant Variety Protection Office must be aware of such reports to be prepared to utilize the information if and when it is desired that all or some biochemical tests be accepted for determining novelty. The above examples illustrate that databases must be expanded to accommodate searching an expanded number of varieties. Library research is also necessary to identify those varieties which are no longer commercially available and which should therefore be removed from the material used in novelty searches.

In its comments ASTA also refers to Board recommended alternatives to library research and other searches performed by examiners in the Plant Variety Protection Office. The Board did recommend alternatives to library search methods in a December 23, 1982, committee report approved and recommended by the Board. The Report's Summary and Conclusions include the following:

> 3. Maintaining variety information in the automated data base presently takes an inordinate amount of time and can be improved by the following:
>
> a. Many obsolete and foreign varieties can properly be excluded from the data base. Technical and legal guidelines are provided for accomplishing this.
>
> b. Incomplete description information on varieties currently in use presents another, and perhaps larger problem. Use of technical experts (discussed later), plus voluntary submission of information by a variety's developer should improve this situation. In the event reasonable efforts to secure this data do not provide adequate information, the variety should be excluded from the data base and future searches (Exhibit 1).
>
> c. Lengthy, elaborate search procedures for a wide range of domestic and foreign publications/information data bases are time consuming. Two approaches should reduce effort in this area.
>
> (1) Provide examiners on-line search capability to such information data bases (discussed later). This capability would speed the information accumulation process.
>
> (2) Obtain assistance from technical experts on the most effective method for maintaining information for given crops. Discontinue using sources which provide duplicate information or are non-productive.

The Plant Variety Protection Office has accepted and implemented most of the Board's recommendations. In implementing the recommendations, the plant variety protection examiners identified varieties in their databases which they considered: (1) Insufficiently described, (2) having no commercial source of seed, (3) a hybrid, or (4) a foreign variety not likely to be imported and used as a variety in the United States. The variety descriptions identified as belonging in one or more of the above four categories were then eliminated from search files. Two lists of variety descriptions were then made up and sent out to identified experts with a request for their assistance in (1) further describing varieties, (2) furnishing information on a commercial seed source of varieties, and (3) identifying varieties which should be eliminated from or added to the list of varieties to be considered in novelty searches. This request for assistance was also announced in the Plant Variety Protection Office Official Journal. Responses from the experts and others offering assistance indicated almost total agreement with the examiners' interpretations as to which varieties should remain in search files and which should be eliminated. After receiving advice on several crops, Commissioner Evans decided that examiners and advisors were in sufficient agreement to end requests for assistance, and the appropriate varieties were eliminated from search files. Approximately 40 percent of the variety descriptions removed were considered to be inadequately described or unavailable varieties. The Association of Official Seed Certifying Agencies established committees of experts in different crops, and plant variety protection examiners utilized the expertise of these committees and other experts on technical matters to implement the Board's advice and improve efficiency.

On-line literature searches recommended by the Board were tried and found not to increase productivity. Therefore, implementing on-line literature searching has been delayed until it can be accomplished more efficiently. Examiners have been advised to search only those publications which are likely to be productive in providing useful information on the crop or varieties not excluded under the above criteria. In the September 22, 1987, meeting, the Advisory Board recommended that the Plant Variety Protection Office keep abreast of new developments in biochemical testing, which indicates that the Board expects the Plant Variety Protection Office to conduct sufficient library research to maintain technical competence to function as examiners.

As we have already stated in our discussion of the proposed fee increase, plant variety protection fees must be sufficient to fund the program. From the time of the last fee increase in 1984 to

fiscal year 1988, program operating costs have risen 35 percent. In view of this increase in costs, it is necessary to raise the fees as specified in the proposed rule, to cover the costs incurred by the Plant Variety Protection Office in providing certification services.

List of Subjects in 7 CFR 180

Plant Variety Protection Act, Administrative practices and procedures, Fees, Courts, Labeling, Plants (Agricultural).

PART 180—[AMENDED]

Accordingly, the Department amends 7 CFR Part 180 as follows:

1. The authority citation for Part 180 is revised to read as follows:

Authority: Secs. 6, 22, 23, 26, 31, 42(b), 43, 56, 57, 91(c), 84 Stat. 1542; 7 U.S.C. 2326, 2352, 2353, 2356, 2371, 2402(b), 2403, 2426, 2427, 2501(c); 29 FR 16210, as amended, 37 FR 6327, 6505; U.S.C. 2371.

2. Section 180.175 is revised to read as follows:

§ 180.175 Fees and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying public of filing	$250
(b) Search or examination	1,900
(c) Allowance and issuance of certificate and notifying public of issuance	250
(d) Revive an abandoned application	250
(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)	1
(f) Authentication (each page)	1
(g) Correcting or reissuance of a certificate	250
(h) Recording assignments (per certificate/application)	25
(i) Copies of 8 x 10 photographs in color	25
(j) Additional fee for reconsideration	250
(k) Additional fee for late payment	25
(l) Additional fee for late replenishment of seed	25
(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)	2,400

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour.

Done at Washington, DC: March 16, 1989.

Robert Melland,

Deputy Secretary for Marketing and Inspection Services.

[FR Doc. 89-6618 Filed 3-20-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

[Docket No. 89-025]

7 CFR Part 301

Mediterranean Fruit Fly; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules.

SUMMARY: We are affirming without change two interim rules that amended the areas quarantined because of the Mediterranean fruit fly by adding and removing portions of Los Angeles County, California.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective October 14, 1988, and published in the **Federal Register** on October 19, 1988 (53 FR 40865-40866, Docket Number 88-159), we amended the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas. In another interim rule effective November 14, 1988, and published in the **Federal Register** on November 21, 1988 (53 FR 46844-46845, Docket Number 88-169), we amended the Mediterranean fruit fly regulations by removing a separate portion of Los Angeles County, California, from the list of quarantined areas. Comments on the interim rules were required to be postmarked or received on or before December 19, 1988, and January 23, 1989, respectively. We did not receive any comments. The facts presented in the interim rules still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

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

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

The rule adding a portion of Los Angeles County, California, affects the interstate movement of regulated articles from that portion of the county. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. The small entities that may be affected by this regulation appear to consist of approximately 85 nurseries, 50 open fruit stands, 5 community gardens, 10 regularly scheduled swap meets (flea markets), 10 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 200 mobile vendors, 7 wholesale distributors, and 20 dooryard fruit producers (producers who contract residentially-produced fruit for commercial sale).

It appears that most of these small entities sell regulated articles primarily for local intrastate, not interstate, markets. Also, a number of these small entities sell other items in addition to the regulated articles so that the effect, if any, on these entities is minimal.

The rule removing a separate portion of Los Angeles County, California, near Van Nuys, from the list of areas quarantined because of the Mediterranean fruit fly, affects the interstate movement of regulated articles from that portion of the county. It appears that there is very little commercial activity in the previously quarantined area that may be affected by that rule. The small entities that may be affected appear to consist of approximately 80 nurseries, 5 open fruit stands, 2 community gardens, 2 regularly scheduled swap meets (flea markets), 3 caterers who send lunch "chuckwagons" to job sites in the previously quarantined area, 1 airport with no scheduled passenger flights, 1 tomato and pepper grower with approximately 4000 plants on a ½-acre field, and 1 tomato grower with a 3-acre field. Both growers sell their products locally at roadside stands.

The effect of this action on these entities should be insignificant, since it appears that most of their sales are for local intrastate markets, not interstate markets, and are therefore not affected.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, we are adopting as a final rule, without change, the interim rules amending 7 CFR Part 301 that were published at 53 FR 40865–40866 on October 19, 1988 and at 53 FR 46844–46845 on November 21, 1988.

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

Done at Washington, DC, this 15th day of March 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-6523 Filed 3-20-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR PART 948

[FV-89-012]

Irish Potatoes Grown in Colorado Area 2; Reduction in Minimum Size Requirement for Certain Long Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of an interim final rule (without change) which reduced the minimum size requirement for certain long potato varieties from 2 inches to 1⅞ inches in diameter. This action is expected to foster increased consumption and have a positive impact on the industry.

EFFECTIVE DATE: April 20, 1989.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in designated counties of Colorado Area No. 2. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

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

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

There are approximately 120 handlers of Colorado Area 2 potatoes subject to regulation under the marketing order, and approximately 290 potato producers in the San Luis Valley (Area 2) of Colorado. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Colorado potatoes may be classified as small entities.

The San Luis Valley Potato Administrative Committee Area 2 estimated that shipments during the 1987–88 season totaled 29, 685 loads at about 480 hundredweight (cwt.) per load. Of the total, about 97 percent of 13,884,416 cwt., entered the fresh market and three percent (364,339 cwt.) was shipped to processors.

The breakdown of shipments by variety was about 69.6 percent Centennial Russets, about 23.6 percent Russet Burbanks, about 6.7 percent reds, and about 0.2 percent other varieties.

One percent of the fresh movement was seed potatoes. The grade composition of the remaining fresh shipments was 63 percent U.S. No. 1, 21 percent U.S. Commercial, 13 percent U.S. No. 2, and two percent U.S. No. 1/ Size B.

An interim final rule was issued on January 6, 1989, and was published in the **Federal Register** on January 11, 1989 (54 FR 962). The rule amended the handling regulation for Irish potatoes grown in Colorado set forth in 7 CFR 948.386. The handling regulations were also amended on March 14, 1988, and January 10, 1989 (53 FR 8146 and 54 FR 806). The interim rule provided that interested persons could file written comments through February 10, 1989. No comments were received.

The handling requirements for fresh market shipments of Colorado Area 2 potatoes are specified in § 948.386 of the regulations and, with the exception of the maturity requirements, are in effect all year long. Currently, round variety potatoes must grade at least U.S. No. 2 and be at least 2 inches in diameter. Before the January 11, 1989, interim final rule went into effect, Russet Burbank potatoes had to grade at least U.S. No. 2 and be at least 1⅞ inches in diameter, and all other long varieties had to be U.S. No. 2 or better grade and 2 inches minimum diameter or 4 ounces minimum weight. All varieties of potatoes may be Size B if they otherwise grade U.S. No. 1. Size B potatoes have a minimum diameter of 1½ inches and a maximum diameter of 2¼ inches. All varieties of potatoes being exported must be at least 1½ inches in diameter. Maturity requirements during the period August 25 through October 31 specify that potatoes grading U.S. No. 2 cannot be more than "moderately skinned," and potatoes grading other than U.S. No. 2 cannot be more than "slightly skinned."

The interim final rule reduced the minimum size requirement for long variety potatoes, except for the Centennial Russet, from 2 to 1⅞ inches in diameter. The Russet Burbank variety will remain at 1⅞ inches. This change was unanimously recommended by the San Luis Valley Potato Administrative Committee Area 2.

Until recently, virtually all long type potatoes grown in the production area were either of the Russet Burbank or Centennial Russet variety. Because these two varieties have different physical characteristics, different size requirements were established for each. The Russet Burbank, which is longer and thinner than the Centennial Russet, is required to be at least 1⅞ inches in diameter. Other long varieties, including the Centennial Russet, were required to be at least 2 inches in diameter before the interim final rule went into effect.

In 1988, a number of new varieties of long potatoes were planted in the San Luis Valley, including the Russet Norkotah, Russet Nugget, Nooksack, and Targhee. During harvest of the crop, it was found that these other long varieties are more similar in size and shape to the Russet Burbank than the Centennial Russet. The committee therefore recommended that these varieties be subject to the 1⅞-inch minimum diameter size requirement established for Russet Burbanks rather than the 2-inch minimum set for other long varieties.

The industry estimated that absent this change, about 15 to 18 percent of these new variety potatoes would have been precluded from being shipped to fresh outlets. This action is expected to increase the amount of marketable potatoes and improve returns to growers. This change is not expected to adversely affect the market for larger potatoes.

Section 8e of the Act requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

Because the current import regulation (§ 980.1), specifies that import requirements for long types be based on those in effect for potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon (7 CFR Part 945) during each month of the marketing year, this change in the handling regulation for Colorado Area 2 potatoes will not affect potato import requirements.

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

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

List of Subjects in 7 CFR Part 948.

Marketing agreements and orders, Potatoes, Colorado.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 948 which was published at 54 FR 961–962 on January 11, 1989, is adopted as a final rule without change.

Dated: March 16, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–6619 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 985

[FV–89–023FR]

Expenses and Assessment Rate for Far West Spearmint Oil

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 985 for the 1989–90 marketing year established for the spearmint oil marketing order. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: June 1, 1989, through May 31, 1990.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

There are approximately 9 handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order, and approximately 253 producers of Far West spearmint oil in the production area. Small agricultural procedures have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of Far West spearmint oil producers and handlers may be classified as small entities.

The spearmint oil marketing order requires that the assessment rate for a particular marketing year shall apply to all assessable spearmint oil handled from the beginning of such year. An annual budget of expenses is prepared by the Spearmint Oil Administrative Committee (SOAC) and submitted to the U.S. Department of Agriculture for approval. The members of the SOAC are handlers and producers of regulated spearmint oil. They are familiar with the SOAC's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the SOAC is derived by dividing anticipated expenses by the expected amount of spearmint oil to be handled. Because that rate is applied to the actual volume of spearmint oil handled, it must be established at a rate which will produce sufficient income to pay the SOAC's expected expenses. The recommended budget and rate of

assessment are usually acted upon by the SOAC shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the SOAC will have funds to pay its expenses.

The SOAC met on January 26, 1989, and unanimously recommended 1989–90 marketing order expenditures of $176,800, and an assessment rate of $0.10 per pound of Far West spearmint oil. In comparison, 1988–89 marketing year budgeted expenditures were $182,500 and the assessment rate was $0.09 per pound. Expenditure categories in the 1989–90 budget are $67,200 for program administration, $83,600 for salaries, and $26,000 for expenses, which includes travel and compensation. Assessment income for 1988–89 is expected to total $160,968.50 based on shipments of 1,609,685 pounds of spearmint oil. Interest and incidental income is estimated at $5,000. The SOAC may expend operational reserve funds of $10,831.50 to meet budgeted expenses. Additional reserve funds may be used to meet any deficit in assessment income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This action adds new § 985.309 and is based on the SOAC's recommendation and other information. A proposed rule was published in the February 24, 1989, issue of the **Federal Register** (54 FR 7937). Comments on the proposed rule were invited from interested persons until March 6, 1989. No comments were received.

After consideration of the information and recommendation submitted by the SOAC and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985:

Far West, Marketing agreements and orders, Spearmint Oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

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

2. New § 985.309 is added as follows:

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

§ 985.309 Expenses and assessment rate.

Expenses of $176,800 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance wtih § 985.41 is fixed at $0.10 per pound of salable spearmint oil for the 1989–90 marketing year ending May 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: March 16, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–6617 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1250

[Docket No. PY–89–001]

Egg Research and Promotion Order Amendments

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting as a final rule the provisions of an interim final rule published January 4, 1989, which amended the Egg Research and Promotion Order. These changes eliminate producer refunds and limit the total costs that may have incurred by the American Egg Board (AEB) in collecting egg producer assessments and having an administrative staff. These changes are required by the Egg Research and Consumer Information Act amendments, which became effective October 31, 1988.

EFFECTIVE DATE: March 21, 1989.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202–447–3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be non-major because it does not meet the criteria contained therein for major regulatory actions.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The majority of producers and handlers under the Egg Research and Consumer Information Act may be characterized as small entities.

The Egg Research and Promotion Order (7 CFR Part 1250) authorizes AEB to collect assessments at the rate of 5 cents per 30-dozen case of commercial eggs marketed or the equivalent thereof. However, effective September 1, 1987, the 5-cent rate of assessment was decreased to 2.5 cents by revising the Egg Research and Promotion Rules and Regulations in §1250.514 (7 CFR 1250.514). AEB collects approximately $3.7 million annually from the 2.5-cent assessment. The assessment is refundable upon demand and presently is at the rate of 43 percent of assessments collected. According to AEB statistics, 1,967 producers pay assessments under the amended Rules and Regulations. Approximately 79 percent of such producers currently do not request refunds; therefore, the implementation of a mandatory assessment would have no additional impact on these producers.

A mandatory assessment of 2.5 cents per 30-dozen case of eggs would be equivalent to approximately 0.14 percent of the wholesale price of a 1-dozen carton of Large eggs. This is based on the Economic Research Service's latest annual average wholesale price of 60.6 cents per dozen. The amendment to the Order would impose additional costs on approximately 21 percent of the producers and any other producers who might request refunds in the future. It is estimated that the AEB would collect $3.7 million annually from a mandatory 2.5-cent assessment. This would represent an increase of 43 percent over the current amount retained after refunds. It is anticipated that any additional costs will be offset by the benefits derived from strengthened research and promotion programs as a result of participation by all producers.

Paperwork Reduction

There is no change in the reporting or recordkeeping requirements imposed on producers and handlers as a result of this action. The Office of Management and Budget approval of these requirements (No. 0581–0098) was renewed for use through August 31, 1989.

Background

The Egg Research and Promotion Order in § 1250.349 [7 CFR § 1250.349] currently provides that any producer, whose eggs are assessed under authority of the Egg Research and Consumer Information Act (7 U.S.C. 2701–2718) and who is not in favor of supporting the programs authorized thereunder, may request refunds of such assessments. The Egg Research and Consumer Information Act Amendments of 1988 (Pub. Law 100–575, effective October 31, 1988) require the Secretary to amend the Egg Research and Promotion Order to eliminate the producer refund provision. Such an amendment would not be subject to a producer referendum until after the end of an 18-month period from the effective date of the amendment, January 1, 1989.

A poll was conducted by AEB of all commercial egg producers, which disclosed that 69 percent of producers voting, representing 79 percent of egg production voting, were in favor of eliminating refunds of producer assessments.

In the House of Representatives' report on the 1988 amendments to the Act (H.R. Rep. No. 1024, 100th Cong. 2nd Sess. 3 (1988)), it was stated that the Act, as enacted in 1974, contains many of the tools needed to address the issues facing the egg industry today. However, there is not sufficient funding for an effective program of research, consumer and producer education, advertising, and promotion. The report states further that the hallmark of an effective and continuous program must be the contribution by all commercial egg producers of their fair share.

The amended Act requires the Secretary to issue an amendment to the Order to eliminate the refund provision. During the period beginning with the effective date of the amendment until approval by referendum of the amendment, the Board is required to place into an escrow account 10 percent of the assessments received from egg producers. If the amendment to the Order is not approved in the referendum, the escrow account will be used to pay refunds to eligible egg producers who requested a refund pursuant to regulations to be promulgated by the Secretary. If the escrow account does not contain sufficient amounts to refund all eligible producers demanding a refund, then the Board will prorate the amount of refunds demanded by eligible producers. If the amendment to the Order is approved, the amount in the escrow account will be used by the Board in accord with the purposes set forth in the Act. Sections 1250.336 and 1250.349 are amended accordingly.

The 1988 amendments also contain a provision limiting the total costs that may be incurred by the Egg Board in collecting producers assessments and for administrative costs to the amount of the projected total assessments to be collected by the AEB as the Secretary determines to be reasonable. Section 1250.336 of the Order is amended to contain such a provision.

The interim final rule establishing these changes was published in the **Federal Register** on January 4, 1989 [54 FR 98], with an effective date of January 1, 1989. Comments were solicited from interested persons through February 3, 1989. One comment in support of the rule was received during the comment period. No opposing comments were received. Accordingly, the amendments made by that interim final rule are adopted without change.

It is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final rule adopts the provisions issued January 1, 1989; (2) the Egg Research and Consumer Information Act Amendments of 1988 require that the Secretary make these amendments to the Order eliminating producer refunds and limiting costs incurred by AEB; (3) interested persons were afforded a 30-day comment period to submit written comments—one comment was received; and (4) producers will be afforded an opportunity to vote in a referendum to be conducted at a future date, in accordance with the 1988 amendments.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation for 7 CFR Part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701 *et seq.*

2. Accordingly, for reasons and purposes stated above and in the interim final rule published January 4, 1989 (54 FR 98), the amendments made to § 1250.336, § 1250.346, and § 1250.349 of Part 1250, Title 7, Code of Federal Regulations, by the said interim rule are hereby adopted as a final rule without change.

Done at Washington, D.C. on March 16, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–6616 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Parts 1421, 1427, and 1434

Price Support and Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The regulations at 7 CFR Parts 1421, 1427, and 1434 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support loan programs for grain and similarly handled commodities; upland and extra long staple cotton; and honey, respectively. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, and eliminate obsolete provisions.

DATE: Effective: March 21, 1989. Comments must be received on or before April 20, 1989 in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Garth Bond, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447–8440.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment,

investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

CCC previously published final rule on March 1, 1988 (53 FR 6131) and November 25, 1988 (53 FR 47658) with respect to CCC price support programs for feed grains, peanuts, rice, soybeans and wheat which are set forth at 7 CFR Part 1421. Those amendments were made to delete obsolete provisions and to provide greater uniformity between the programs. The changes made by this interim rule will, to the maximum extent practicable, provide that the upland and extra long staple cotton and honey programs are administered in the same manner as the aforementioned programs.

The interim rule also deletes in 7 CFR Parts 1421 and 1427 references to specific amounts which are charged by CCC for loan-making and related services. Most of the current fees have been in effect since the 1974 crop year. Fees for sugar processor loans were implemented for the 1982 crop. Since the current fees charged do not recover the cost of either the total loan administration function or the loan-making activity alone, 7 CFR Parts 1421 and 1427 are amended to allow for increases in fees so that CCC may recover a greater portion of the current costs incurred. The interim rule provides that such rates will be as determined by CCC in order that CCC may more accurately determine such rates on a State by State basis by taking into account differences in State laws that affect loan-making activities and actual costs incurred by CCC when providing price support to producers.

This rule also amends the cotton and honey price support loan provisions with respect to lien subordination agreements. Since CCC price support loans are nonrecourse loans, producers may forfeit the loan collateral in total satisfaction of the loan. Therefore, CCC has required all parties which have a lien on the commodity which has been pledged as collateral for such a loan to execute either a lien waiver or lien subordination agreement with respect to such commodity before a CCC price support loan is made to the producer. In order to protect fully CCC's interest in the commodity which may be forfeited upon the maturity of the loan, CCC no longer utilizes lien subordination agreements. Accordingly, 7 CFR Parts 1427 and 1434 are revised by deleting references to such agreements.

Since producers are currently making decisions regarding commodities which may be pledged as collateral for CCC price support loans, the provisions of this interim rule are effective upon publication in the **Federal Register.** Comments are requested, however, and will be taken into consideration when developing the final rule.

It has been determined that the Regulatory Flexibility Act is not applicable to the interim rule since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

List of Subjects

7 CFR Part 1421

Grains, Loan programs—agriculture, Price support programs.

7 CFR Part 1427

Cotton, Loan programs—agriculture, Price support programs.

7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs.

Accordingly, Chapter XIV of Title 7 of the Code of Federal Regulations is revised to read as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR Part 1427 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423 and 1444–1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99–198.

Subpart—Cotton Loan Program Regulations

2. Sections 1427.1 through 1427.3 are revised to read as follows:

§ 1427.1 Applicability.

(a) The regulations of this subpart are applicable to the 1989 and subsequent crops of upland cotton and extra long staple cotton and the 1988 crops of such cotton if such cotton is pledged as collateral for a price support loan which is extended in accordance with this Part. These regulations set forth the terms and conditions under which nonrecourse price support loans shall be made available by the Commodity Credit Corporation ("CCC") with respect to upland and extra long staple lint cotton. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates, the schedule or premiums and discounts, the schedule of micornaire discounts, loan service and related fees and the forms which are used in administering the price support program for a crop of upland and extra long staple cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices," respectively). Price support rates shall be based upon the location of the approved warehouse in which the loan collateral is stored.

(c) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.2 Administration.

(a) The price support program which is applicable to a crop of cotton shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county ASC committees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State or county committees to waive or modify deadlines and other

program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and purchase agreements and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.3 Definitions.

(a) The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in Parts 28, 719 and 1413 of this title shall also be applicable.

"Authorized LSA" means a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including:

(1) Preparing and executing loan documents;

(2) Disbursing loan proceeds;

(3) Handling the extension of loans as authorized by CCC;

(4) Accepting cotton loan repayments;

(5) Handling documents involved with forfeiture of cotton loan collateral to CCC; and

(6) Providing loan data to CCC for statistical purposes.

"Charges" means all fees, costs, and expenses incurred in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for price support. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

"Cotton" means, as defined in Part 1413 of this chapter, upland cotton and extra long staple cotton as applicable.

"Financial institution" means: (1) A bank in the United States which accepts demand deposits; and (2) an association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

"Lint cotton" means cotton which has passed through the ginning process.

"Loan clerk" means a person approved by CCC to assist producers in preparing loan documents.

"Seed cotton" means cotton which has not passed through the ginning process.

3. In § 1427.4 paragraph (a) is revised and paragraphs (d), (e), (f), and (g) are added to read as follows:

§ 1427.4 Eligible producer.

(a) An eligible producer of a crop of cotton shall be an individual, partnership, association, corporation, estate, trust, State or political subdivision or agency thereof, or other legal entity which:

(1) Produces such a crop as a landowner, landlord, tenant, or sharecropper;

(2) Meets the requirements of this Part; and

(3) Meets the requirements of Parts 12, 718, and 1413 of this title.

* * * * *

(d)(1) Two or more producers may obtain a single joint loan with respect to cotton which is stored in an approved warehouse if the warehouse receipt which is pledged as collateral for the loan is issued jointly to such producers. The cotton in bale may have been produced by two or more eligible producers on one or more farms if the bale is not a repacked bale.

(2) If more than one producer executes a note and security agreement with CCC, each such producer shall be jointly and severally liable for the violation of the terms and conditions of the note and security agreement and the regulations set forth in this part. Each such producer shall also remain liable for repayment of the entire loan amount until the loan is fully repaid without regard to such producer's claimed share in the cotton pledged as collateral for the loan. In addition, such producer may not change the note and security agreement with respect to the producer's claimed share in such cotton, or loan proceeds, after execution of the note and security agreement by CCC.

(e) Loans may be made to a warehouseman who, in the capacity of a producer, tenders to CCC warehouse receipts issued by such warehouseman on cotton produced by such warehouseman only in those States where the issuance and pledge of such warehouse receipts are valid under State law.

(f) A cooperative marketing association which has been approved in accordance with Part 1425 of this chapter may obtain price support on behalf of the members of the cooperative who are eligible to receive price support with respect to a crop of cotton. For purposes of this subpart, the term "producer" includes an approved cooperative marketing association.

(g) Except as may otherwise be provided in this part, a producer shall not delegate to any person (or any agent or representative of such person), except to a farm manager, who has an interest in storing, processing, or merchandising cotton which is eligible to receive price support in accordance with this part the authority to exercise on behalf of the producer any of the producer's rights which arise in accordance with this subpart.

4. In section 1427.5, paragraphs (a) through (c) are revised to read as follows:

§ 1427.5 General eligibility requirements.

(a) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices. In order to receive price support for a crop of cotton, a producer must execute a note and security agreement on or before May 31 of the year following the year in which such crop is normally harvested. A Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cotton A and within the period of loan availability.

(b)(1) Cotton must be tendered to CCC by an eligible producer and must:

(i) Be in existence and in good condition at the time of disbursement of loan proceeds;

(ii) Be a grade and staple length specified in:

(A) The schedule of premiums and discounts for upland cotton or

(B) The schedule of loan rates for extra long staple cotton and must be represented by a warehouse receipt meeting the requirements of § 1427.12;

(iii) Not be false-packed, water-packed, mixed-packed, reginned, or repacked and:

(A) Upland cotton must not have been reduced more than two grades because of preparation; and

(B) Extra long stable cotton must have been ginned on a roller gin, must have been produced in a county designated as suitable for the production of such cotton, must not have a micronaire reading of 2.6 or less, and must not have been reduced in grade for any reason;

(iv) Not be compressed to universal density where side pressure has been applied or to high density at a warehouse;

(v) Not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan; and

(vi) Not have been previously sold and repurchased; or pledged as collateral for a CCC price support loan and redeemed.

(2) Each bale of cotton must:

(i) Weigh not less than 325 pounds net weight;

(ii) If compressed to standard or higher density either at warehouse or at a gin, have not less than eight bands;

(iii) Be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging materials. Heads of bales must be completely covered. Copies of the 1989 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a);

(iv) Be ginned by a ginner:

(A) Who has entered the tare weight of the bale (bagging and ties used to wrap the bale) on the gin bale tag, and

(B) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(2)(iv)(A) of this section.

(c)(1) To be eligible to receive price support, a producer must have the beneficial interest in the cotton which is pledged as collateral. The producer must always have had the beneficial interest in the cotton unless, before the cotton was harvested, the producer and a former producer whom the producer tending the cotton to CCC has succeeded had such an interest in the cotton. Heirs who succeed to the beneficial interest of a deceased producer or who assume such producer's obligations under an existing loan shall be eligible to receive price support whether succession to the cotton occurs before or after harvest as long as the heir otherwise complies with the provisions of this Part. Such succeeding producer must assume a substantial interest in, and responsibility for, the production of the cotton. Mere purchase or inheritance of a crop prior to harvest without acquisition of any additional interest in the farm on which the crop is produced shall not constitute succession of a beneficial interest.

(2) A producer shall not be considered to have divested the beneficial interest in the cotton if the producer enters into a contract to sell or gives an option to buy the cotton, if under the contract or option the producer retains control, risk of loss and title to the cotton subject to such agreement, and retains control of the production of the cotton. Cotton obtained by purchase shall not be eligible to be tendered to CCC for price support.

(3) If price support is made available to producers through an approved marketing cooperative in accordance with Part 1425 of this chapter, the beneficial interest in the cotton must always have been in the producer-member who delivered the cotton to the cooperative except as otherwise provided in this subsection. Cotton delivered to such a cooperative shall not be eligible to receive price support if the producer-member who delivered the cotton does not retain the right to share in the proceeds from the marketing of the cotton as provided in Part 1425 of this chapter.

§ 1427.5 [Amended]

5. In § 1427.5, paragraphs (d) through (o) are removed and paragraphs (p) and (q) are redesignated as paragraphs (d) and (e), respectively.

§ 1427.6 [Amended]

6. In § 1427.6, paragraph (d) is removed.

7. Section 1427.8 is amended by removing paragraphs (b), (c) and (g); reserving paragraphs (b) and (c); and revising paragraphs (a) and (d) to read as follows:

§ 1427.8 Amount of loan.

(a) Loans will be made on the net weight of the cotton as shown on the warehouse receipt, except that in the case of a bale which has a net weight of more than 600 pounds, the weight to be used in determining the amount of the loan on the bale shall be 600 pounds. Cotton pledged as collateral for loans on the basis of reweights will not be accepted if CCC determines that such reweights reflect an increase in weight due to the absorption of moisture. CCC will deduct from the current weight of the bale any estimated weight gained while in storage.

(b) and (c) [Reserved]

(d) The amount of the loan for each bale will be determined by multiplying the net weight of the bale, as determined under paragraph (a) of this section, by the applicable loan rate and subtracting any unpaid warehouse receiving charges, any warehouse storage charges in excess of 60 days as of the date of tender to CCC, as provided in § 1427.12(c), and any unpaid charge for furnishing new bale ties as prescribed in § 1427.12(c). CCC will not increase the amount of the loan made with respect to any bale of cotton as a result of a redetermination of the quality of the bale after it is tendered to CCC, except that if it is established to the satisfaction of CCC that a bona fide error was made with respect to the weight of the bale or the loan rate for the bale as specified on the Form A–1, such error may be corrected.

(e) * * *

§ 1427.8 [Amended]

8. In § 1427.8(f) the reference to "Part 770" is amended to read "Part 1470".

§ 1427.11 [Removed and reserved]

9. Section 1427.11 is removed and reserved.

10. Section 1427.13 is revised to read as follows:

§ 1427.13 Liens.

If there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the commodity after the loan is approved.

11. Section 1427.14 is revised to read as follows:

§ 1421.14 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC or, if applicable, to an authorized LSA, at a rate determined by CCC. Any such fee shall be in addition to any loan clerk fee paid to a loan clerk in accordance with paragraph (b) of this section.

(b) Loan clerks may only charge fees for the preparation of loan documents at the rate determined by CCC.

(c) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this

chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

§§ 1427.15 and 1427.16 [Removed and Reserved]

12. Sections 1427.15 and 1427.16 are removed and reserved.

13. The first sentence of § 1427.18(c) is amended by removing the phrase "as required by § 1427.11" and paragraph (g) is revised to read as follows:

§ 1427.18 Special procedure where note amount advanced.

* * * * *

(g) Interest will be paid at the rate in effect for CCC loans as provided in Part 1405 of this chapter.

* * * * *

14. Section 1427.21 is revised to read as follows:

§ 1427.21 Liability of the producer.

(a)(1) If a producer makes any fraudulent representation in obtaining, maintaining, or settling a loan or disposes of or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(i) The amount of the loan;

(ii) Any additional amounts paid by CCC with respect to the loan;

(iii) All other costs which CCC would not have incurred but for the fraudulent representation or the unauthorized disposition or movement of the loan collateral; and

(iv) The payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts.

(2)(i) If a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral, the value of such collateral shall be determined by CCC, and shall be the lower of:

(A) The market value of the commodity at the close of the market on the final date for repayment; or

(B) The loan settlement value of the commodity.

(ii) Notwithstanding the provisions of paragraphs (a)(2) of this section, if CCC sells the loan collateral in order to determine the market value of the commodity, the lower of:

(A) The sales price of the commodity less any costs incurred by CCC in completing the sale; or

(B) The loan settlement value of the commodity.

(b) If the amount disbursed under a loan, or in settlement thereof, exceeds the amount authorized by this Part, the producer shall be liable for repayment of such excess, plus interest. In addition, the commodity pledged as collateral for such loan shall not be released to the producer until such excess is repaid.

(c) If the amount collected from the producer in satisfaction of the loan is less than the amount required according to this Part, the producer shall be personally liable for repayment of the amount of such deficiency.

(d) In the case of joint loans, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note.

15. Section 1427.22 is revised to read as follows:

§ 1427.22 Repayment of loans.

(a)(1) If a producer desires to redeem one or more bales of cotton pledged as collateral for a loan, the producer may receive the warehouse receipts (and the classification memoranda applicable to such cotton, if requested) at the local county ASCS office upon payment of the loan, interest, and charges applicable to the bales of cotton being redeemed. The producer may also request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the amount of the loan, interest, and charges must be paid to the bank within 5 business days after the documents are received by the bank. Repayments will not be accepted after CCC acquires the cotton. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, CCC may allow producers to redeem one or more bales of cotton pledged as collateral for a loan by paying to CCC an amount less than the total of the principal amount of the loan, interest and other charges as may be set forth under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan.

(3) The producer may request that the warehouse receipts and classification memoranda be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer, by filing with ASCS an ASC Form–211 or other power of attorney document approved by CCC, may designate another person to act on behalf of the producer for the purpose of:

(i) Redeeming the producer's cotton which is pledged as collateral,

(ii) Selling the producer's equities in the cotton pledged as loan collateral, or

(iii) Executing Forms CCC–813, release of Warehouse Receipts "Form 813".

(2) In order to redeem cotton pledged as collateral for a loan or to execute a Form 813 a person designated by the producer in accordance with the subsection must file with the county ASCS office, or the authorized LSA, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy.

(3) The attorney-in-fact redeeming a producer's cotton under authority of a power of attorney, including a person who has a power of attorney through execution of a Form 813, shall not:

(i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or

(ii) Sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the equities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not:

(i) Pool the producer's cotton or the proceeds therefrom; or

(ii) Make settlement with such producers on a pool basis upon sale of the cotton or the equities therein.

(6) The attorney-in-fact shall make an accounting to each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person or transferee (the "buyer") by executing a Form 813. If the buyer executes and files the Form 813 with the loan originating office, the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan. CCC will deliver to the buyer the warehouse receipts and, if requested, the classification memoranda covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges at the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand, advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in this section.

16. Section 1427.23 is revised to read as follows:

§ 1427.23 Settlement.

(a) The settlement of loans shall be made by CCC on the basis of the grade, quality, and quantity of the commodity delivered to CCC by the producer.

(b) Settlements made by CCC with respect to eligible commodities which are acquired by CCC which are stored in an approved warehouse shall be made on the basis on the entries set forth in the applicable warehouse receipt and other accompanying documents.

(c) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral.

(d) On or after maturity and nonpayment of the note, title to the cotton shall, at CCC's election, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value which such cotton may have in excess of the amount of the loan, plus interest and charges.

(e) In the event the producer has made a fraudulent representation in the loan documents or in obtaining the loan:

(1) The producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton pledged as collateral for the loan as of the date title vests in CCC, as determined by CCC; and

(2) The proceeds received from the sale of the cotton shall be credited by CCC against the amount due on the loan, and the producer shall be personally liable for any balance due on the loan.

(f) To avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less will be paid to the producer only upon the producer's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

§ 1427.25 [Removed and Reserved]

17. Section 1427.25 is removed and reserved.

Subpart—Inventory Protection Payment [Removed]

18. Part 1427 is amended by removing the following obsolete subpart: "Subpart—Inventory Protection Payment" and §§ 1427.75–1427.79.

Subpart—Seed Cotton Loan Program Regulations [Amended]

19. Sections 1427.160 through 1427.162 are revised to read as follows:

§ 1427.160 General statement.

(a) The regulations in this subpart are applicable to the 1989 and subsequent crops of upland and extra long staple cotton when the Commodity Credit Corporation ("CCC") announces that recourse loans are available with respect to such a crop. If such an announcement is made, such loans will be available through March 31 of the year following the calendar year in which such crop is planted. Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive such loans.

(b) Price support rates and the forms which are used in administering the program for a crop of upland and extra long staple cotton are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively). Price support rates shall be based upon the location at which the loan collateral is stored.

(c) A producer must, unless otherwise authorized by CCC, request price support at the county office which, in accordance with Part 719 of this title, is responsible for administering programs for the farm on which the cotton was produced. An approved cooperative marketing association must, unless otherwise authorized by CCC, request price support at a servicing agent bank approved by CCC. All note and security agreements and related documents necessary for the administration of the price support programs shall be determined by CCC and are available at State and county offices.

(d) Price support loans shall not be available with respect to any commodity produced on land owned or otherwise in the possession of the United States if such land is occupied without the consent of the United States.

§ 1427.161 Administration.

Section 1427.2 of this part shall be applicable to this subpart.

§ 1427.162 Definitions.

Section 1427.3 of this part shall be applicable to this subpart.

20. In § 1427.163, paragraph (b) is revised to read as follows:

§ 1427.163 Disbursement of loans.

* * * * *

(b) Disbursement of each loan will be made by the county office of the county

in which the cotton is stored, except that approved cooperatives designated by producers to obtain loans in their behalf may obtain disbusement of loans at a servicing agent bank. Service charges shall be deducted from the loan proceeds. The producer or the producer's agent shall not present the loan documents for disbursement unless the cotton is in existence and in good condition. If the cotton is not in existence and in good condition at the time of disbursement, the producer or the agent shall immediately return the check issued in payment of the loan or, if the check has been negotiated, shall promptly return the proceeds.

* * * * *

21. Section 1427.164 is revised to read as follows:

§ 1427.164 Eligible producer.

Section 1427.4 of this part shall be applicable to this subpart.

22. Section 1427.165 is revised to read as follows:

§ 1427.165 Eligible seed cotton.

(a) Cotton pledged as collateral for a loan must be tendered to CCC by an eligible producer and must be:

(1) In existence and in good condition at the time of disbursement of loan proceeds;

(2) Stored in identity preserved lots in approved storage meeting requirements of § 1427.171; and

(3) Insured at the full loan value against loss or damage by fire.

(b) The quality of cotton which may be pledged as collateral for a loan shall be the estimated quality of lint cotton in each lot of seed cotton as determined by the county office, except that if a control sample of the lot of cotton is classed by a USDA Board of Cotton Examiners, the quality for the lot shall be the quality shown on the form 1 or form 3 classification card issued for the control sample.

(c) To be eligible for price support, the beneficial interest in the commodity must be in the producer who is pledging the commodity as collateral for a loan as provided in § 1427.5(c)(1).

§ 1427.168 [Removed]

§ 1427.175 [Redesignated]

23. Section 1427.168 is removed and § 1427.175 is redesignated as § 1427.168.

24. Section 1427.169 is revised to read as follows:

§ 1427.169 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this Chapter. Except with respect to called loans, loans which have been repaid by the maturity date shall accrue interest in accordance with 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

25. Sections 1427.172 and 1427.173 are revised to read as follows:

§ 1427.172 Settlement.

(a) A producer may, at any time prior to maturity of the loan, obtain release of all or any part of the loan cotton by paying to CCC the amount of the loan, plus interest and charges.

(b)(1) A producer or the producer's agent shall not remove from storage any cotton which is pledged as collateral for a loan until prior written approval has been received from the county committee for removal of such cotton. If a producer or the producer's agent obtains such approval, they may remove such cotton from storage, sell the seed cotton, have it ginned, and sell the lint cotton and cotton seed obtained therefrom. The ginner shall inform the county office in writing immediately after the cotton removed from storage has been ginned and furnish the county office the loan number, producer's name, and applicable gin bale numbers. If the seed cotton is removed from storage, the loan interest and charges thereon must be satisfied not later than the earlier of:

(i) The date established by the county committee;

(ii) 5 days of the date of the producer received the class cards (and the warehouse receipt, if the cotton is delivered to a warehouse), representing such cotton; or

(iii) The loan maturity date.

(2) If the seed cotton or lint cotton is sold, the loan, interest, and charges must be satisfied immediately.

(3) A producer (except a cooperative) may obtain a warehouse stored loan on the lint cotton, but the loan, interest, and charges on the seed cotton must be satisfied out of the proceeds of the warehouse stored loan.

(4) An approved cooperative must repay the seed cotton loan, interest, and charges before pledging the cotton for a warehouse stored loan. If approved cooperatives and commercial ginning companies authorized by producers to obtain loans in their behalf remove seed cotton from storage prior to obtaining approval to move such cotton, such removal shall constitute conversion of such cotton unless:

(i) The cooperative or commercial ginning company notifies the county office in writing the following morning by mail or otherwise that such cotton has been moved and is on the gin yard;

(ii) Furnished CCC an irrevocable letter of credit if requested; and

(iii) Repays the loan within the time specified by the county committee.

(5) Any removal from storage shall not be deemed to constitute a release of CCC's security interest in the cotton or to release the producer or approved cooperative from liability for the loan, interest, and charges if full payment of such amount is not received by the county office.

(c) If, either before or after maturity, the producer discovers that the cotton is going out of condition or is in danger of going out of condition, the producer shall immediately so notify the county office and confirm such notice in writing. If the county committee determines that the cotton is going out of condition or is in danger of going out of condition, the county committee will call for repayment of the loan on or before a specified date. If the producer does not repay the loan or have the cotton ginned and obtain a warehouse-stored loan on the lint cotton produced therefrom within the period as specified by the county committee, the cotton shall be considered abandoned.

(d) If the producer has control of the storage site and if the producer subsequently loses control of the storage site or there is danger of flood or damage to the cotton or storage structure making continued storage of the cotton unsafe, the producer shall immediately either repay the loan or move the cotton to the nearest approved gin for ginning and shall, at the same time, inform the county office. If the producer does not do so, the cotton shall be considered abandoned.

§ 1427.173 Foreclosure.

Any seed cotton pledged as collateral for a loan which is abandoned or which has not been removed from storage by loan maturity may be removed from storage by CCC and ginned and the resulting lint cotton warehoused for the account of CCC. The lint cotton and cottonseed may be sold, at such time, in such manner, and upon terms as CCC may determine at public or private sale. CCC may become the purchaser of the whole or any part of such cotton and cottonseed. If the proceeds are less than the amount due on the loan (including interest, ginning charges, and any other charges incurred by CCC), the producer shall be liable for such difference.

§ 1427.176, 1427.177, 1427.178, 1427.180, 1427.181 [Removed]

26. Sections 1427.176, 1427.177, 1427.178, 1427.180 and 1427.181 are removed.

PART 1421—[AMENDED]

27. The authority citation for 7 CFR Part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441, 1441–1, 1444b, 1445b–2, 1445c–2, 1445e, 1446 and 1447; 15 U.S.C. 714b and 714c.

28. In § 1421.12, paragraph (a) is revised to read as follows:

§ 1421.12 Fees, charges and interest.

(a) *Loan service fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

* * * * *

PART 1434—[AMENDED]

29. The authority citation for 7 CFR Part 1434 is revised to read as follows:

Authority: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c.

§ 1434.12 [Removed and reserved]

30. Section 1434.12 is removed and reserved.

31. Section 1434.13 is revised to read as follows:

§ 1434.13 Liens.

If there are any liens or encumbrances on the honey, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the honey after the loan is approved.

32. Section 1434.14 is revised to read as follows:

§ 1434.14 Fees, charges and interest.

(a) A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

§ 1434.18 [Removed and reserved]

33. Section 1434.18 is removed and reserved.

Signed at Washington, DC, on March 10, 1989.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89–6219 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–05–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance; Final Statement of Policy on Risk-Based Capital

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: Since early 1985, the FDIC has employed minimum supervisory leverage ratios of primary and total capital to total assets in assessing the capital adequacy of state-chartered banks that are not members of the Federal Reserve System ("state nonmember banks"). While these ratios of capital to total assets have served as useful tools for assessing capital adequacy, the FDIC has determined that there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banks.

In this regard, the FDIC and the other U.S. Federal banking agencies first proposed in early 1986, and again in 1987 in conjunction with the Bank of England, the adoption of a risk-based capital measure that would take explicit account of broad differences in risks among a bank's assets and off-balance sheet items. The FDIC deferred final action on these earlier proposals in order to participate in the development of a more broadly based capital framework that would be applicable to international banks. As a result of consultations with supervisory authorities from certain major industrial countries, the FDIC, on March 15, 1988, issued for public comment a revised risk-based capital framework that superseded the previous proposals. The revised proposal was based upon a risk-based capital framework developed jointly by supervisory authorities from the 12 countries that are represented on the Basle Committee on Banking Regulations and Supervisory Practices.

The comment period for the FDIC's proposal ended on May 13, 1988. Comments addressing various aspects of its proposal were received from over 150 respondents. Based upon the comments received, discussions with the other U.S. banking agencies, and further consultation with international supervisory authorities, the FDIC has modified its March 1988 proposal and is now issuing in final form its revised risk-based capital framework as a Statement of Policy on Risk-Based Capital.

The FDIC's adoption of this statement of policy achieves important goals long sought by U.S. banking supervisors. First, it establishes a risk-based capital framework that is more sensitive than the current leverage ratios to risk factors, including off-balance sheet exposures. Second, it encourages international banks to strengthen their capital positions. Finally, it mitigates a source of competitive inequity arising from different supervisory capital requirements across countries.

The risk-based capital guidelines represent a major step in the process of coordination with regulatory authorities of other countries to establish appropriate capital standards for banks, in accordance with the International Lending Supervision Act of 1983. In that regard, the FDIC notes that the regulatory authorities of the 12 major industrial countries intend to issue appropriate directives to those banks under their supervision, in order to facilitate implementation of the risk-based capital framework on an international basis.

EFFECTIVE DATE: The framework for calculating risk-based capital ratios will take effect on April 20, 1989. The interim 7.25 percent minimum supervisory ratio reflected in the framework's transitional provisions becomes effective on December 31, 1990. The final 8 percent minimum supervisory ratio will become effective on December 31, 1992, the date on which the transition period ends.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Assistant Director, Division of Bank Supervision (202/898–6918), or Stephen G. Pfeifer, Examination Specialist, Securities and Accounting Section (202/898–8904).

SUPPLEMENTARY INFORMATION:

In 1986, and again in 1987 in conjunction with the Bank of England, the Federal banking agencies issued for public comment risk-based capital proposals applicable to U.S. banks. The principal objectives of these early proposals were: (1) To develop more systematic procedures for factoring on- and off-balance sheet risks into supervisory assessements of capital adequacy; (2) to reduce disincentives to holding liquid, low-risk assets; and (3) to foster coordination among supervisory authorities from major industrial

countries, many of which employ risk-sensitive capital measures.

These risk-based capital proposals were consistent with one of the major goals of the International Lending Supervision Act of 1983 ("ILSA"), 12 U.S.C. 3901 *et seq.*, which was to strengthen the bank regulatory framework by encouraging greater coordination among regulatory authorities in different countries. In addition to enhancing the banking agencies' authority to establish and enforce minimum levels of capital for U.S. banks, this Act instructed those agencies to work with governments, central banks, and regulatory authorities of other countries to maintain and, where necessary, strengthen the capital positions of banking institutions involved in international lending.

The FDIC deferred final action on the 1986 and 1987 proposals in order to participate in the development of a more broadly based capital framework that would be applicable to international banks from the major industrial countries. In December 1987, the Basle Committee on Banking Regulations and Supervisory Practices ("Basle Supervisors' Committee") issued a consultative paper (the "Basle Accord") containing proposals for a risk-based capital framework.[1] The principal objectives of the framework were to achieve greater convergence in the measurement and assessment of capital adequacy internationally and to strengthen the capital positions of major international banks. That document served as the basis for consultations and public comment in the Group of Ten ("G–10") countries.

In the United States, the vehicle for consultation and public comment took the form of proposed risk-based capital guidelines, which were based upon the December 1987 Basle Accord, and which the FDIC, together with the other Federal banking agencies, issued for public comment on March 15, 1988 (53 Fed. Reg. 8550 (1988)). Although the comment period on the FDIC's proposed Statement of Policy on Risk-Based Capital formally ended on May 13, 1988, the FDIC continued to receive and consider comments after that date. Over 150 comment letters were received that addressed various aspects of the proposed risk-based capital framework.

A number of changes were made by the Basle Supervisors' Committee to the December 1987 Basle Accord in light of comments received by both domestic and foreign banking authorities and as a result of consultations among the G–10 countries. A revised July 1988 Basle Accord, endorsed by the central bank governors of the G–10 countries on July 11, 1988, reflects these changes.[2] The FDIC is now issuing in final form its Statement of Policy on Risk-Based Capital, revised in light of the public comments received in response to the March 1988 proposal, the ongoing consultative process among the G–10 countries, and discussions with the other U.S. banking agencies.

The development of a risk-based framework in conjunction with supervisory officials from other industrial countries acknowledges the growing internationalization of major banking and financial markets throughout the world. The harmonization and strengthening of capital standards worldwide should contribute to a more stable and resilient international banking system and help mitigate a source of competitive inequality for international banks stemming from differences in national supervisory capital requirements.

The FDIC statement of policy applies to all FDIC-insured state-chartered banks (excluding insured branches of foreign banks) that are not members of the Federal Reserve System ("state nonmember banks"), regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process, as well as in the analysis of applications that the FDIC is required to act upon. Similar risk-based capital guidelines are also being adopted by the Federal banking agencies that have primary supervisory authority over state member banks and national banks.

Although the Basle Accord is specifically directed to international banks, the FDIC will apply the risk-based capital framework to all the state nonmember banks under its jurisdiction, since the FDIC believes that the underlying rationale behind the use of a risk-based capital approach applies to small domestic banks as well as large international banking organizations.

The final statement of policy contemplates, as did the March 1988 proposal, that the calculation of a risk-based capital ratio is only one step in evaluating capital adequacy. The focus of the risk-based capital framework is principally based on broad categories of credit risk. As a result, the framework does not take explicit account of many other factors that can affect a bank's financial condition, such as overall interest rate exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks.

A complete assessment of capital adequacy must take account of each of these other considerations including, in particular, the level and severity of problem and classified assets. Thus, the risk-based capital ratio is but one element in the assessment of overall capital adequacy, and the final supervisory judgment of a bank's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the bank's risk-based capital ratio. In light of these other considerations, state nonmember banks generally will be expected to operate above the minimum risk-based capital ratio. Banks contemplating significant expansion plans, as well as those institutions with high or inordinate levels of risk, should hold capital commensurate with the level and nature of the risks to which they are exposed.

The risk-based capital framework consists of (1) a *definition of capital* for risk-based capital purposes, (2) a system for calculating *risk-weighted assets* by assigning assets and off-balance sheet items to one of four broad risk weight categories, and (3) a schedule, which includes transitional arrangements during a phase-in period, for achieving a *minimum supervisory ratio* of capital to risk-weighted assets. A bank's risk-based capital ratio is calculated by dividing its qualifying total capital base (the numerator) by its risk-weighted assets (the denominator). Table I of the statement of policy outlines the definition of capital used for risk-based capital purposes, Table II summarizes the risk weights and risk categories, and Table III sets forth the credit conversion factors for off-balance sheet items.

This final risk-based capital framework includes a number of changes to the March 1988 proposed statement of policy. These changes are based, in part, on the public comments

[1] The Basle Supervisors' Committee is comprised of representatives of the central banks and supervisory authorities from the Group of Ten countries (Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States), and Luxembourg.

[2] The Basle Accord is described in a paper prepared by the Basle Supervisors' Committee entitled "International Convergence of Capital Measurement and Capital Standards," dated July 1988.

received by the FDIC. Most respondents expressed general support for the concept of a risk-based capital measure; however, many objected to specific aspects of the proposed framework. In addition, some respondents expressed the view that the risk-based capital proposal might adversely affect the ability of banks to compete with nonbank financial institutions that are not subject to similar standards.

Comments on the framework covered the proposed capital definition, the treatment of assets and off-balance sheet activities, and the types of banks to which the risk-based framework should be applied. The principal concerns regarding the definition of capital focused on the treatment of perpetual preferred stock, loan loss reserves, and intangible assets such as goodwill. Comments on risk weights addressed the proposed treatment of claims involving country transfer risk, claims on domestic and foreign central governments, claims on local governments, claims on multilateral lending institutions, claims on government-sponsored agencies, claims on domestic and foreign banks, claims backed by private sector financial guarantees, and claims in the form of residential mortgages and mortgage-backed securities. With respect to off-balance sheet items, the major comments related to the recognition of counterparty netting arrangements and the credit conversion factor for long-term foreign exchange rate contracts.

Comments were also received on the use of original, rather than remaining, maturity in both the assignment of risk weights to long-term claims on foreign banks and the assignment of credit conversion factors to commitments. Some commenters also addressed the use of average, versus period-end, data in calculating the risk-based capital ratio. Finally, a number of respondents commented on the relationship of the risk-based capital ratio to the FDIC's existing Part 325 capital maintenance regulation, as well as the application of the risk-based framework to small banks.

Sections I through III below describe modifications to the March 1988 proposal that the FDIC has adopted as a result of public comments received on the proposal, changes incorporated into the July 1988 Basle Accord, and the continuing consultative process within the Basle Supervisors' Committee. Section I outlines revisions made to the definition of capital, Section II describes changes in the treatment of assets and off-balance sheet exposures, and Section III deals with the implementation of the risk-based framework.

I. Definition of Capital

The final risk-based capital framework sets forth a definition of capital for state nonmember banks that is substantially similar to that contained in the March 1988 proposal. This section reviews comments received on, and revisions made in, the treatment of three elements of capital—perpetual preferred stock, loan loss reserves, and term subordinated debt. The treatment of intangible assets within the risk-based framework is also discussed.

A. Perpetual Preferred Stock

Consistent with the December 1987 Basle Accord, the March 1988 proposed guidelines stated that, for supervisory purposes, capital would consist of two tiers: Tier I capital, comprising core capital elements; and Tier 2 capital, comprising supplementary capital elements. Tier I capital was defined to include common stockholders' equity capital, including disclosed capital reserves and minority interests in consolidated subsidiaries. However, perpetual preferred stock was excluded from the definition of Tier 1 capital.

Over 35 respondents addressed the treatment of preferred stock, with nearly all of them arguing that perpetual preferred stock should count as an element of Tier 1 capital. These commenters suggested that perpetual preferred stock, in terms of its ability to absorb losses, serves as a nearly perfect substitute for common equity because it is permanent, it is subordinate to the claims of depositors and general creditors, and preferred dividends can be deferred without triggering an act of default. Some respondents favored including only limited amounts of perpetual preferred stock within Tier 1, while others took the position that regulators should define the characteristics of preferred stock that may be of some supervisory concern and exclude from Tier 1 only those forms of preferred stock that possess such characteristics. Several respondents noted that perpetual preferred stock is the most expensive form of Tier 2 capital, and suggested that outstanding issues of such stock might be redeemed if not given Tier 1 treatment.

In its March 1988 proposal the FDIC excluded all perpetual preferred stock from Tier 1 capital in view of certain structural differences that exist between common stock and perpetual preferred stock. First, it is very difficult, if not impossible, to issue new common stock if there exists large dividend arrearages on preferred stock that must be repaid before common shareholders can receive dividends. Second, preferred dividends, unlike common dividends, are often fixed or set in relation to an external market index, rather than based upon the bank's earnings. Third, the prior claim on earnings associated with many forms of preferred stock gives these instruments some of the characteristics of debt obligations. Finally, most forms of preferred stock lack voting rights under normal circumstances.

However, consistent with the revised Basle Accord, the FDIC has modified its definition of Tier 1 capital for state nonmember banks to include *noncumulative* perpetual preferred stock [3] in Tier 1 capital. Cumulative preferred stock, on the other hand, remains as part of Tier 2 capital. Perpetual preferred stock that has a *noncumulative* feature is a closer substitute for common stock than cumulative preferred stock, since any dividend payments that have been waived do not represent a contingent claim on the issuer. Despite the inclusion of noncumulative perpetual preferred stock in Tier 1, the FDIC believes that, from a supervisory standpoint, it is desirable that voting common shareholders' equity remain the dominant form of Tier 1 capital. Thus, state nonmember banks are expected to avoid undue reliance on such other forms of Tier 1 capital as nonvoting common, noncumulative perpetual preferred and minority interests in consolidated subsidiaries.

The decision to include noncumulative perpetual preferred stock in Tier 1 raised the question of whether there are some specific forms of noncumulative preferred stock that possess features that do not warrant such favorable treatment. In this regard, the FDIC believes that auction rate preferred stock (including so-called "Dutch auction" preferred stock) has certain features that do not allow it to fulfill the supervisory purposes of Tier 1 capital and, hence, has excluded such stock from Tier 1 capital. Auction-rate preferred stock refers to those types of preferred stock (including money market and remarketable preferred stock) where the dividend is reset periodically based to some degree upon the bank's current credit rating.

[3] Perpetual preferred stock is defined as preferred stock that has no maturity date, that cannot be redeemed at the option of the holder of the instrument, and that has no other provisions that will require future redemption of the issue.

A number of supervisory concerns stem from this type of instrument. If sufficient buyers are not interested in holding the stock at the maximum rate at which it can be offered, the auction is said to have failed. This, in itself, can raise questions about the issuer's financial standing and subject the issuer to pressure from unhappy or unwilling investors to repurchase the outstanding stock. In addition, the very fact that the preferred stock dividend yield can rise when a bank's financial condition or credit rating is deteriorating can exacerbate the institution's financial difficulties. In light of these considerations, the FDIC believes that the auction rate features of such preferred shares render them inconsistent with the notion of Tier 1 instruments as the highest quality form of capital. As a result, auction-rate perpetual preferred stock will qualify only as an element of Tier 2 capital.

Although auction rate preferred stock is not included in Tier 1, the risk-based guidelines do not prohibit the inclusion of noncumulative floating rate or adjustable rate perpetual preferred stock in Tier 1 capital, so long as the yield on these instruments is based *solely* on general market interest rates and is not subject to an auction mechanism that requires or allows the rate to vary in relation to the financial standing or credit rating of the issuer.

B. Allowance for Loan and Lease Losses

Recognizing that it is not always possible to distinguish clearly between general and specific reserves, the December 1987 Basle Accord proposed phasing in a limit on the amount of general loan loss reserves includable in Tier 2 capital. By the end of 1992, the allowance for loan and lease losses included in Tier 2 capital cannot exceed *1.25 percent* of risk-weighted assets.The FDIC's March 1988 proposal treated the allowance for loan and lease losses as Tier 2 capital up to this limit and, consistent with the Basle Accord, excluded from capital any specific reserves established against identified losses.

The majority of comments received from the more than 30 U.S. respondents that addressed the proposed treatment of loan loss reserves suggested either one or both of the following: (1) including general reserves in Tier 1 capital, and (2) raising or eliminating the proposed limits on the amount of these reserves that can be included in the definition of capital. Banks in many other G–10 countries, on the other hand, have expressed the view that certain types of reserves, such as those established against loans to less developed countries, are *not* freely available to absorb losses and that, in many G–10 countries, such reserves are excluded from bank capital. These banks accordingly have argued for the exclusion of all such reserves from capital.

Under generally accepted accounting principles, the loan loss allowance account reflected by U.S. banks takes the form of a valuation adjustment against the bank's entire loan portfolio. these adjustments represent losses inherent or anticipated within the existing portfolio but that have not yet been identified to individual loans. Because capital is intended to serve as a buffer against unanticipated losses, it would appear appropriate to exclude such reserves from Tier 1 capital and to place such reserves in Tier 2 capital subject to the limits contained in the Basle Accord. The amount of reserves includable in Tier 2 is generally consistent with the amount of loan loss reserves that historically were included in U.S. bank capital up until 1987, when certain larger banks first established large reserves against country transfer risk exposures to certain less developed countries.

During the transition period, the Basle Supervisors' Committee intends to continue to try to reach an agreement on the types of reserves that are truly general in nature and, therefore, freely available to absorb losses anywhere in the portfolio. If an acceptable agreement is reached, then the Basle Accord and these risk-based guidelines would be revised to permit the inclusion of unlimited amounts of such general reserves within Tier 2. If an acceptable agreement is not reached, then the amount of general reserves includable in Tier 2 capital by the end of the transition period will be limited to 1.25 percent of risk-weighted assets, as proposed in the FDIC's March 1988 proposal and subsequently set forth in the revised July 1988 Basle Accord.

C. Term Subordinated Debt Instruments

The December 1987 Basle proposal included term subordinated debt instruments with a fixed term to maturity as a limited element of Tier 2 capital but did not specify a minimum term to maturity for these instruments. Consistent with the FDIC's existing capital regulation, the March 1988 proposal stated that subordinated debt issues and limited-life preferred stock must have a minimum original weighted average maturity of at least seven years to qualify for inclusion in Tier 2 capital. The revised Basle Accord specifies that term debt instruments must have a minimum original term to maturity of over five years to qualify for inclusion in Tier 2. Accordingly, the FDIC's final statement of policy provides that term subordinated debt instruments and intermediate-term preferred stock with an original average weighted maturity of at least five years are includable as limited elements within Tier 2.

D. Intangible Assets

Over 30 respondents addressed the treatment of intangible assets in the calculation of the amount of Tier 1 capital, with most of the commenters objecting to the FDIC's proposal requiring the deduction of all intangible assets (other than mortgage servicing rights) from the Tier 1 capital elements. Most of the respondents believed that goodwill and other intangible assets should not be immediately deducted from capital for risk-based capital purposes, but rather should be amortized out of capital over a reasonable period of time.

Banks strongly opposed the proposed deduction of goodwill and other intangible assets for several reasons.[4] First, they argued that intangible assets have realizable value. Second, they stated their belief that the deduction places banks at a competitive disadvantage relative to nonbank competitors in bidding for acquisitions. Third, they argued that the deduction would hamper the process of domestic banking consolidation in the United States by effectively eliminating purchase accounting as a viable method of consummating mergers and acquisitions. Many respondents also indicated that the deduction of intangible assets is contrary both to generally accepted accounting principles and existing regulatory accounting practices. Because of these concerns, several commenters argued that at least a limited amount of goodwill and other intangible assets (generally, 25 percent) should be allowed in Tier 1 capital.

[4] Intangible assets (other than mortgage servicing rights) are deducted from a state nonmember bank's capital accounts when determining the amount of regulatory capital under the FDIC's existing Part 325 capital maintenance regulation. Thus, the treatment of intangible assets set forth in the FDIC's March 1988 risk-based capital proposal was consistent with existing FDIC policy. In this regard, rather than specifically addressing the treatment of intangible assets held by banks, many of the comments received by the FDIC actually focused primarily on the treatment under the Federal Reserve's proposed risk-based capital guidelines for intangible assets held by *bank holding companies*. A discussion of how the Federal Reserve will treat intangible assets held by bank holding companies is included in their final risk-based capital guidelines, which were published in the **Federal Register** on January 27, 1989.

The uncertainty often associated with determining the future benefits and useful lives of intangible assets raises supervisory concerns. During periods of financial adversity, some intangibles may not provide the degree of support that is normally expected from a bank's assets. As a result, the FDIC has decided to treat intangible assets for risk-based capital purposes as initially proposed and thereby require the deduction of all intangible assets (other than mortgage servicing rights) when calculating the amount of Tier 1 capital. This treatment of intangible assets is consistent with that applied to state nonmember banks under the FDIC's existing Part 325 capital maintenance regulation. In reaching this determination, the FDIC evaluated several general characteristics of different classes of intangible assets, including:

(1) The separability of the intangible asset and the ability to sell it apart from the bank or from the bulk of the bank's assets;

(2) The certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank; and

(3) The existence of a market of sufficient depth to provide liquidity for the intangible asset.

In evaluating the above characteristics, the FDIC believes that mortgage servicing rights, as a class of intangible assets, generally possess characteristics that allow for their favorable treatment for supervisory capital purposes. Although this favorable treatment is not extended to any other class of intangible assets, the FDIC retains the flexibility to recognize for risk-based capital purposes any other intangible assets that have been explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. Even though intangible assets in the form of mortgage servicing rights will generally be favorably recognized for risk-based capital purposes, the deduction of part or all of these rights from Tier 1 capital may be required if the carrying amounts of the mortgage servicing rights are excessive in relation to their market value or the level of the bank's capital accounts.

II. Risk Weight Treatment for Assets and Off-Balance Sheet Items

A. Claims Involving Country Transfer Risk

The December 1987 Basle Accord and the March 1988 FDIC proposal did not attempt to incorporate transfer risk into the risk-based capital framework. In general, claims on all *foreign* governments and banks were treated alike, without distinguishing among the countries involved, and these claims received less favorable risk weights than claims on similar *domestic* institutions. Banks in European Community ("EC") countries, however, were permitted to treat claims on institutions in member countries as domestic claims.

This aspect of the March proposal generally met with citicism from foreign banks and large U.S. banks, which noted that the treatment accorded to long-term claims on foreign banks and claims guaranteed by foreign banks might disrupt the interbank market and create disincentives for U.S. banks to convey risk participations to foreign banks. Some commenters also argued that the preferential treatment accorded banks in EC countries gave these institutions a competitive advantage in dealing with each other. Others argued for equal, low-risk treatment for claims on banks and governments from a group of countries identified as being of high credit quality, such as the signatories to the Basle Accord or the members of the Organization for Economic Cooperation and Development ("OECD").

Taking into account these comments, and consistent with the revised July 1988 Basle Accord, the final FDIC statement of policy treats claims on governments and banks of a defined group of countries, which includes members of the OECD and countries that have concluded special lending arrangements with the International Monetary Fund ("IMF") associated with its General Arrangements to Borrow (the OECD-based group of countries),[5] in the same manner as claims on similar domestic institutions. Claims on central governments of other countries are assigned to the 100 percent risk category unless such claims are denominated in local currency and funded in local currency liabilities, in which case the claims may be assigned to the same zero percent risk weight that is used for claims on OECD central governments. Short-term claims on banks domiciled in countries that do not belong to the OECD-based group of countries will receive the same 20 percent risk weight assigned to claims on domestic banks; however, long-term claims (remaining maturity of over one year) on banks from non-OECD countries will receive a 100 percent risk weight.

B. Long-Term Claims on Central Governments

The December 1987 Basle Accord assigned claims on domestic central governments (including claims guaranteed by domestic central governments or collateralized by the securities) to the zero or low risk category to reflect the presumed absence of credit risk. National supervisors were granted discretion, however, to place some of these claims, including long-term claims, in a slightly higher risk category in order to capture a degree of market and interest rate risk. Accordingly, the risk-based framework proposed in March 1988 assigned a zero percent risk weight to securities (direct obligations) issued by the U.S. Government with a remaining maturity of 91 days or less and a 10 percent risk weight to similar claims of over 91 days.

A 10 percent risk weight also was assigned to all claims guaranteed by the U.S. Government or collateralized by its securities.

A number of respondents to the March 1988 proposal disagreed with the proposed method for incorporating interest rate risk because it did not take into account all assets, liabilities, and off-balance sheet transactions. Some commenters argued that all government obligations, long- and short-term, should be assigned to the zero percent risk category due to the absence of credit risk. Others expressed concern about the framework's lack of a more sophisticated approach to interest rate risk, arguing that placing long-term government bonds in the zero percent risk category could imply (incorrectly) that there are no risks to holding such instruments.

In addition, some commenters opposed the proposed maturity split for government securities on the grounds that it would place U.S. banks at a competitive disadvantage to banks in other G–10 countries since, in the view of the respondents, most G–10 countries intended to assign a zero percent risk weight to all claims on their domestic central governments, regardless of maturity. In light of the recognition of country transfer risk now incorporated into the risk-based capital framework, the zero percent risk weight would apply not only to claims on the domestic central government, but also to claims on, and guaranteed by, foreign central governments of the OECD-based group of countries.

[5] The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow.

After careful consideration of all of the above factors and consultation with the other U.S. Federal banking agencies, the FDIC has decided to eliminate the distinction between long- and short-term OECD central government securities and has decided to assign all such securities, as well as all claims *unconditionally* guaranteed by the full faith and credit of OECD central governments, to the lowest (zero percent) risk category.

Thus, with respect to the United States, all direct U.S. Treasury obligations are assigned to the zero percent risk weight. This category would generally include all securities with unconditional guarantees by the U.S. Government or its agencies intended to facilitate their active trading in the financial markets, including Government National Mortgage Association ("GNMA") pass-through securities. Loans guaranteed by the U.S. Export-Import Bank ("Eximbank") are also generally assigned to the zero percent risk weight category. This approach has the benefit of restricting the lowest risk category to only those central government obligations in the form of direct claims on or claims unconditionally guaranteed by the OECD-based central governments. By eliminating the maturity break on central government securities, this approach also simplifies the risk-based framework and effectively eliminates the need for the 10 percent risk category that was set forth in the March 1988 proposal. As a consequence, this final statement of policy includes only four risk categories (0, 20, 50 and 100 percent), as opposed to the five risk weights used in the March proposal.

Claims that are *conditionally* guaranteed by OECD central governments (including the U.S. Government and its agencies) are assigned to the 20 percent risk category. If the validity of the guarantee to the holder (beneficiary) of the claim is dependent upon some affirmative action (e.g., servicing requirements) by the holder or a third party, then the guarantee is not considered unconditional. For example, in the case of the United States, such claims generally would include portions of loans guaranteed under certain programs administered by the Federal Housing Administration (FHA), the Small Business Administration (SBA), and the Veterans Administration (VA). All claims *collateralized* by securities issued by OECD-based central governments (including the U.S. Government and its agencies) will generally be assigned to the 20 percent risk category. The FDIC believes that this treatment is appropriate since, as a general matter, such secured claims on private obligors are not in all respects equivalent, from a risk standpoint, to the direct holding of central government debt securities. Moreover, restricting the zero percent category to direct holdings of government securities and obligations unconditionally guaranteed by the government lessens supervisory concerns regarding the volume and riskiness of assets assigned the zero percent risk weight.

Assigning long-term direct government obligations to the zero percent risk category differs from past FDIC proposals, but this treatment should not be interpreted as suggesting that the holding of such instruments involves little or no risk. The FDIC's previous concerns over the assignment of long-term government securities to the zero percent risk category are mitigated by the decision among the U.S. banking agencies to retain an overall leverage constraint (see Section III). Retaining a leveage ratio does, in fact, ensure a minimum capital charge for central government securities, together with all other assets, and precludes the possibility of excessive leveraging of the government securities portfolio. Moreover, examiners will continue to carefuly scrutinize banks' interest rate risk exposures and will require institutions with inordinate levels of interest rate risk to strengthen their capital positions, even though they may meet the minimum capital standards. In addition, the FDIC will continue to work with the other domestic and international supervisory authorities to develop better procedures for measuring and assessing interest rate risk.

C. Claims on the Non-Central (Local) Government Public Sector

The July 1988 revised Basle Accord continues to provide for national discretion in assigning risk weights to claims on domestic local governments. However, the framework generally assigns a standard 20 percent risk weight to claims on, or guaranteed by, foreign local governments of the OECD-based group of countries.

The FDIC's March 1988 proposal assigned a 20 percent risk weight to *general* obligation (full faith and credit) claims on a domestic local government, as well as to all claims guaranteed by the full faith and credit of a domestic local government. It also assigned a 50 percent risk weight to local domestic government *revenue* obligations for which the government entity is committed to repay the debt only with revenues from the facilities financed, rather than from general tax funds. Consistent with the December 1987 Basle proposal, revenue obligations issued by local governments for the benefit of *private entities* that are committed to repay the principal and interest were accorded a 100 percent risk weight, as were claims on, or guaranteed by, foreign local government entities.

Several commenters suggested that all public sector claims that a local government is committed to repay (including revenue bonds) receive a 20 percent risk weight. In their view, assigning a 20 percent or 50 percent risk weight to such obligations based on the source of repayment would create unwarranted distinctions among classes of state and municipal debt. The FDIC has decided to retain the proposed risk weights for claims on domestic local governments and, consistent with the Basle framework, to extend the same treatment to similar claims on foreign local governments of the OECD-based group of countries. Also consistent with the Basle framework, a 100 percent risk weight is assigned to all claims on local government entities of countries that do not belong to the OECD-based group of countries.

Financial guaranty insurance industry commenters objected to an aspect of the March 1988 proposal related to the treatment accorded to local government revenue obligations. Consistent with the Basle framework, the proposal recognized bank, but not nonbank, guarantees of local government obligations. Eight commenters argued that the proposal's preferential treatment for bank-issued guarantees creates an incentive for banks to hold local government revenue obligations backed by bank-issued standbys, which would have a 20 percent risk weight, rather than similar obligations backed by triple A-rated financial guaranty insurance companies, which would have a 50 percent or 100 percent risk weight, depending upon the nature of the underlying obligor.

Because the Basle Accord does not recognize nonbank private sector guarantees or take private sector credit ratings into account in assigning assets to risk categories, recognition or private sector financial guarantees for risk-based capital purposes, as urged by this group, would be inconsistent with the framework agreed upon by the G–10 countries. Accordingly, the final guidelines do not recognize such guarantees. Nonetheless, the treatment of private sector financial guarantees may be considered in the future in connection with international

discussions on refinements to the risk-based capital framework.

D. Multilateral Lending Institutions and Regional Development Banks

The December 1987 Basle proposal granted national supervisory authorities discretion to assign a zero to 20 percent risk weight to claims on multilateral lending and regional development institutions but assigned a 100 percent risk weight to claims guaranteed by these organizations or collateralized by their securities. Several international organizations expressed concern that proposals of member countries to the Accord inconsistently assigned risk weights to claims on the same international institutions. Others supported a 20 percent risk weight for *all* such institutions, and requested that this treatment be extended to claims guaranteed by these entities and to claims collateralized by their securities.

The final statement of policy reflects the revised Basle Accord's uniform 20 percent risk weight for claims on five multilateral development banks—the African Development Bank, the Asian Development Bank, the European Investment Bank, the Inter-American Development Bank, and the World Bank—as well as for claims guaranteed by these institutions or collateralized by their securities. As permitted by the revised Basle Accord, the final guidelines extend the same treatment to claims on similar institutions in which the United States is a shareholder or contributing member.

E. Claims on Government-Sponsored Agencies

The FDIC's March 1988 proposal assigned a preferential 20 percent risk weight to claims on U.S. Government-sponsored agencies [6] to reflect their relatively low risk and what is viewed as their special relationship with the U.S. Government. Of the 36 comments received on this issue, about half, including some from government-sponsored agencies themselves, offered support for the proposed 20 percent risk weight; the other half of the commenters generally advocated a lower 10 percent risk weight, although a few supported an even higher 50 percent risk weight.

Respondents that opposed a risk weight lower than 20 percent pointed out that government-sponsored agency securities lack the explicit full faith and credit backing of the U.S. Government. Respondents in favor of a lower risk weight contended that the market does not distinguish between the level of risk associated with these obligations and the risk associated with long-term claims on the U.S. Government and U.S. Government agencies, which the proposal weighted at 10 percent. A number of commenters, including several Congressmen, opposed the differential between the 10 percent risk weight proposed for GNMA securities—which bear the full faith and credit guarantee of the U.S. Government—and the 20 percent risk weight assigned to Federal Home Loan Mortgage Corporation ("FHLMC") and Federal National Mortgage Association ("FNMA") securities—which do not explicitly bear such a guarantee—on the grounds that it would create tiering in the secondary mortgage market and raise mortgage costs for consumers.

In view of the structure of the Basle framework, the FDIC has decided to maintain the 20 percent risk weight for claims on all government-sponsored agencies. The FDIC continues to believe that the debt obligations of government-sponsored agencies should not be accorded the same treatment as other direct government obligations that carry the explicit U.S. Government guarantee.

F. Real Estate Mortgages and Mortgage-Backed Securities

1. Mortgages

The FDIC's March 1988 proposal assigned a 100 percent risk weight to loans secured by owner-occupied one-to-four family residential properties, rather than the preferential 50 percent risk weight proposed by the Basle Supervisors' Committee. In proposing not to apply the preferential weight, the FDIC sought to avoid the appearance or reality of regulatory credit allocation among private sector borrowers. Of the 52 commenters that addressed this issue, an overwhelming majority opposed the proposed 100 percent risk weight. Respondents stated that it would place U.S. banks at a competitive disadvantage in both domestic and foreign mortgage markets and cited the historically low default rate on residential mortgages as a justification for a lower risk weight.

Upon further consideration of this issue, the FDIC has decided to assign a preferential risk weight of 50 percent to loans secured by one-to-four family residential properties. Consistent with the revised Basle Accord, the FDIC is extending this preferential risk weight to mortgages on one-to-four family residential properties that are rented as well as owner-occupied. In this regard, the revised Basle Accord instructs national supervisory authorities to apply this preferential weight restrictively as to encompass only residential purposes; that is, it is not to apply to speculative property development. Moreover, national authorities are granted the latitude to develop strict prudential criteria for the application of this low risk weight. Accordingly, the guidelines assign a 50 percent risk weight only to loans secured by *first* liens on *one-to-four family* residential properties that are *not* 90 days or more past due or carried in nonaccrual status.

The assignment of mortgages to the 50 percent risk weight category is based on the presumption that banks will adhere to prudent and conservative underwriting standards with respect to maximum loan-to-value ratio, the borrower's paying capacity, and the long-term expectations for the real estate market in which the property is located. If, in the course of the supervisory process, it is determined that a bank has not adhered to such underwriting standards, the FDIC may require additional capital, increased reserves, or both, to be maintained by the bank.

This revised treatment for one-to-four family residential mortgages also affects the risk weight assigned to the *undrawn* portion of home equity lines. As is the case with other commitments, home equity loan commitments that a bank: (1) can unconditionally cancel within one year; [7] and (2) reviews at least annually to determine whether or not they should be extended, are treated as short-term commitments. Short-term commitments are deemed to involve low risk and, therefore, are not assessed a capital charge. However, like other long-term commitments, the undrawn portion of long-term home equity lines of credit are converted at 50 percent. The resulting credit equivalent amount is then assigned a 50 percent risk weight if the loan is secured by a first lien or a 100 percent risk weight if it is secured by a junior lien.

[6] Government-sponsored agencies are entities that were established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose obligations do not carry the explicit full faith and credit guarantee of the U.S. Government.

[7] In the case of consumer home equity lines of credit secured by liens on 1–4 family residential property, a bank is deemed able to unconditionally cancel the line for purposes of this criterion if, at its option, the bank can prohibit additional extensions of credit, reduce the credit line, and terminate the line to the full extent permitted by relevant Federal law. The FDIC has determined that this approach is appropriate in view of the preferential treatment that the Basle Accord grants home mortgages generally and in light of the Congressional purposes behind the Home Equity Loan Consumer Protection Act of 1988, which sets forth certain guidelines under which lenders may cancel or not make advances on home equity lines.

2. Mortgage-Backed Securities

The Basle Accord does not specifically address certain instruments, such as mortgage-backed securities and the newly developed stripped mortgage-backed securities. Nonetheless, the FDIC has determined that, within the context of the overall risk-based capital framework, it is appropriate to view privately-issued mortgage-backed securities, such as mortgage pass-through securities and collateralized mortgage obligations (CMOs), that meet certain criteria outlined in the statement of policy as essentially *indirect holdings* of the underlying assets. Accordingly, such securities are generally assigned to the same risk weight appropriate to the highest risk-weighted asset in the underlying asset pool, except in no case will these securities be assigned to the zero percent risk weight category,[8] which is generally reserved for *direct* claims on OECD-central governments.

Privately-issued mortgage-backed securities that do not meet the specified criteria are assigned to the 100 percent risk weight category. Any classes of a mortgage-backed security that can absorb more than their *pro rata* share of the loss without the whole mortgage-backed security issue being in default, for example, so-called subordinated classes or residual interests, are also assigned a 100 percent risk weight regardless of the issuer or guarantor of the security.

Stripped mortgage-backed securities, including interest-only (IOs), principal-only (POs), and similar instruments, possess different structural characteristics from the typical mortgage-backed securities. These differing characteristics are reflected in the extreme price volatility and market risk associated with these instruments. For this reason, the FDIC has decided to assign these instruments, regardless of issuer or guarantor, to the 100 percent risk category.

G. Interest Rate and Foreign Exchange Rate Contracts

1. Netting

Consistent with the December 1987 Basle Accord, the FDIC's March 1988 proposal did not recognize netting of interest rate and foreign exchange rate contracts between counterparties for the purpose of calculating the risk-based capital ratio. The proposal indicated that this would not be done until the legal issues surrounding the netting of contracts were satisfactorily resolved. Commenters on this issue generally asserted that netting reduces risk and that, therefore, some form of netting should be recognized. Of those that favored a specific netting arrangement, a majority endorsed netting by novation.[9] A number of commenters believed that the legal support for certain types of netting arrangements was stronger than was characterized in the December 1987 Basle Accord.

The revised July 1988 Basle Accord reflects the determination by the Basle Supervisors' Committee that novated contracts replace in law and in fact the contracts they have extinguished and that novation is the only form of netting legally enforceable at this time under the bankruptcy laws of all member countries. Accordingly, the FDIC's statement of policy recognizes netting by novation, but no other forms of netting, for the purpose of calculating credit equivalent amounts of interest rate and foreign exchange rate contracts. The FDIC will continue to work with the Basle Supervisors' Committee to assess the acceptability of various other forms of netting.

2. Conversion Factor for Long-Term Foreign Exchange Rate Contracts

Consistent with the December 1987 Basle Accord, the March 1988 proposal set forth a 5 percent conversion factor for calculating potential future credit exposure on foreign exchange rate contracts with a remaining maturity of over one year. U.S. and foreign bank commenters stated their view that the conversion factor was too high. They argued that it not only overstated the risks associated with such contracts, but also might hurt the competitiveness of banks in this market vis-a-vis other financial firms that are not subject to the same capital requirements. The Basle Supervisors' Committee decided against reducing this factor in light of the risks relating to the volatility of foreign exchange rates and because currency swaps, unlike interest rate swaps, involve an exchange of principal on maturity. Accordingly, these guidelines retain the 5 percent conversion factor for long-term foreign exchange rate contracts.

The FDIC notes that while this conversion factor has not been reduced, foreign exchange rate contracts in general receive favorable treatment under the Basle framework. While direct extensions of credit to standard risk obligors are assigned a risk weight of 100 percent, the credit equivalent amounts of foreign exchange rate (and interest rate) contracts involving such obligors are assigned a preferential maximum risk weight of 50 percent on the grounds that most counterparties in those markets are of high credit quality. The FDIC intends to monitor the quality of credits in these markets and, in the future, might consider assigning a 100 percent risk weight to credit equivalent amounts of foreign exchange and interest rate related contracts if circumstances so warrant.

H. Original Versus Remaining Maturity

The FDIC's March 1988 proposal, consistent with the December 1987 Basle Accord, assigned risk weights to claims on foreign banks and credit conversion factors for off-balance sheet loan commitments based, in part, on their *original* maturity. The action reflected the view that, other things being equal, the longer the term of a claim or commitment, the greater the risk. According to this view, after a long-term claim or commitment has been extended, many events can occur to reduce the creditworthiness of the borrower. If such events do occur, the lending institution is subject to risks greater than those foreseen when the claim or commitment was originally extended, even if only a short amount of time remains under the facility.

U.S. commenters, however, disagreed with this view and overwhelmingly favored the use of *remaining* maturity which, they stated, reflects more accurately the risk associated with these transactions. Moreover, many of the 35 respondents that addressed this issue noted that their internal information systems were based on remaining maturity, and that maintenance of a separate system based on original maturity solely for risk-based capital purposes would entail substantial costs.

Partially in response to these concerns, the revised July 1988 Basle Accord and the FDIC's final statement of policy apply risk weights to claims on foreign banks domiciled in non-OECD countries based on their *remaining*, rather than original, maturity. The Basle Supervisors' Committee remained of the belief, however, that the use of remaining maturity was inappropriate for commitments. Consequently, the revised Basle Accord bases the credit conversion factors that apply to loan commitments on their *original* maturity, but allows banks to use *remaining*

[8] Mortgage-backed securities issued or guaranteed by U.S. Government agencies or U.S. Government-sponsored agencies are generally assigned to the same risk weight as other claims issued or guaranteed by such agencies.

[9] Netting by novation involves a written bilateral contract between two counterparties under which any obligation to the other counterparty to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, *legally* substituting one single net amount for the previous gross obligations.

maturity until year-end 1992. The FDIC's statement of policy also provides for this transition rule so that those banks that currently track loan commitments according to their remaining, rather than original, maturity will have sufficient time to adjust their internal information systems.

I. Average Versus Period-End Data

The FDIC's March 1988 proposal requested comment on whether the calculation of the risk-based ratio should be based on average or period-end data. Of the 33 comments received on this issue, about one-half favored the use of period-end figures, one-fourth supported the use of average figures, and the other fourth contended that average figures should be used for most balance sheet assets with period-end figures used for off-balance sheet items. Commenters, in theory, generally agreed that the use of average data would be more meaningful and less misleading than period-end figures. On the other hand, many of the same respondents cited the cost and impracticality of generating average data for all assets and off-balance sheet items.

In an effort to minimize the burden associated with the risk-based capital framework, the FDIC had decided to allow banks to use period-end data in calculating the risk-based capital ratio. However, on a case-by-case basis, banks may also be required to calculate risk-based capital ratios using average balances if supervisory concerns render it appropriate.

III. Application of the Framework

A. The Impact on Existing Capital to Asset (Leverage) Ratios

The Basle framework and the FDIC's final statement of policy provide for: (1) a transition period through the end of 1992 during which minimum risk-based capital standards will be phased into the existing supervisory system, and (2) an interim minimum supervisory ratio of capital to risk-weighted assets that becomes effective at the end of 1990. As set forth in the FDIC's March 1988 proposal, the existing primary and total capital to *total assets* ratios (leverage ratios) will be retained at least until the initial minimum risk-based capital ratio takes effect at the end of 1990.

Of the 17 comments received on this issue, nearly three-fourths of the respondents favored abandoning the existing leverage ratios because their continued use could be confusing and would be unnecessary in light of the risk-based framework. However, several commenters advocated retaining the leverage ratios out of concern that the risk-based standard was too lenient; others argued that continued application of a leverage standard was appropriate until greater experience is gained with the risk-based ratio.

The FDIC believes that retention of the existing leverage ratios, or some modified form of these ratios, is desirable in order to maintain some constraint on a banks' overall leverage. Retention of an overall leverage constraint is important since, in the absence of such a constraint and without a comprehensive measure for interest rate risk, the assignment of a significant volume of assets to the zero percent or other lower risk categories under the risk-based capital framework could allow a bank to assume an unwarranted degree of leveraging and risk-taking. In light of these concerns, the Federal banking agencies have been working toward a common leverage guideline. In the interim, the continued use of the existing leverage ratios will provide an element of continuity as transition is made to a risk-based framework.

The FDIC and the other Federal banking agencies recognize that different capital definitions for leverage and risk-based capital purposes carry the potential for confusion and perhaps an element of undue burden. As a result, the FDIC expects to propose a revised leverage constraint that would replace the existing leverage ratios by year-end 1990. It is contemplated that the definition of capital under such a revised leverage constraint would be consistent with the definition of capital used for risk-based capital purposes and that the minimum ratio under the revised leverage standard would be set at a level consistent with the current minimum total capital-to-total assets standard.

B. Application of Risk-Based Framework to Small Banks

The Basle Accord applies only to internationally active banks, but it recognizes that each national supervisory authority may wish to apply the framework to a broader class of commercial banking organizations. The FDIC believes that the risk-based capital framework should apply to all banks on a consolidated basis on the grounds that the principle of assessing capital adequacy against broad levels of risk exposure is relevant to all banks, regardless of size.

Nonetheless, the Federal banking agencies recognize that, to a large extent, the impact of the framework will fall predominantly on large banking organizations and on those banks with significant off-balance sheet exposures. Accordingly, the agencies solicited public comment on several options regarding the appropriate focus of offsite supervisory data collection and monitoring efforts. These options included focusing data collection and monitoring efforts on either all banks, large banks, or institutions with significant off-balance sheet activities.

Of the 38 comments received on this issue, nearly two-thirds of the respondents recommended that supervisory data collection and monitoring efforts focus on organizations above some asset size. This consensus reflected concern about the reporting burden that the proposed capital guidelines could place on small banks. Many of these respondents favored the use of an asset size threshold of either $500 million or $1 billion, with the reporting burden kept to a minimum for all banks below the threshold. Of the other one-third of the respondents, most favored the application of the framework to *all* depository institutions, including savings and loan associations and credit unions.

The FDIC continues to believe that the minimum risk-based capital ratio should apply to *all* banks, since all banks can hold low-risk, as well as high-risk, assets and all banks may engage in off-balance sheet activities. Moreover, this approach helps avoid the appearance of a dual standard for large and small institutions. However, the FDIC also believes that any additional reporting requirements arising from the risk-based framework should be held to a minimum for small banks. The FDIC, together with the other Federal banking agencies, intends to be guided by this principle in developing reporting forms that will allow for the monitoring of compliance with the risk-based capital standards while minimizing the reporting burden on the smaller institutions.

C. Treatment of Investments in Subsidiaries

The FDIC's risk-based capital framework generally provides for the consolidation of subsidiaries when calculating the risk-based capital ratio, but the framework also is intended to accommodate functional regulation and the expansion of bank powers. To accomplish this latter objective, the statement of policy allows the FDIC to deduct investments in certain subsidiaries from the parent bank's capital and to exclude the assets of these subsidiaries from the parent's consolidated assets, for example, in situations where strong firewalls, adequate nonbank capital, and any

other protections the FDIC deems necessary are first put in place to safeguard the parent bank.

This treatment ensures that the parent bank maintains a level of capital, exclusive of the resources invested in such subsidiaries, that is sufficient to support its banking activities. By way of example, the statement of policy provides that investments by a state nonmember bank in securities subsidiaries established pursuant to 12 CFR 337.4 are to be deducted from a bank's capital for purposes of calculating the risk-based capital ratio. The statement of policy also provides that investments in unconsolidated banking and finance subsidiaries—that is, any subsidiaries that are primarily engaged in banking or finance but for which the parent bank does not consolidate the subsidiaries for regulatory capital purposes—are also to be deducted from the bank's capital. Thus, the risk-based capital framework specifically allows for the exclusion of the parent bank's investments in, and the assets of, designated subsidiaries from the calculation of the state nonmember bank's capital ratio. For risk-based capital purposes, aggregate capital investments in these unconsolidated subsidiaries (that is, the sum of any equity or debt capital investments and other instruments or commitments that are deemed to be capital of the subsidiary) will be deducted from the parent bank's total capital base. Advances (that is, loans, extensions of credit, guarantees, commitments, or any other forms of credit exposure) to such subsidiaries that are not deemed to be capital will generally not be deducted from capital. Rather, such investments will normally be included in the parent bank's consolidated assets and assigned to the 100 percent risk category, unless such obligations are backed by recognized collateral or guarantees, in which case they will be assigned to the risk category appropriate to such collateral or guarantees. These other extensions of credit may, however, be deducted from the parent bank's capital if, in the judgment of the FDIC, the risks stemming from such advances are comparable to the risks associated with capital investments, or if the advances involve other risk factors that warrant such an adjustment to capital for supervisory purposes.

Although investments in certain subsidiaries, such as those representing a majority ownership in another Federally-insured depository institution, are not consolidated for purposes of the consolidated Reports of Condition and Income that are filed by the parent bank, they are generally consolidated for purposes of determining regulatory capital requirements under the FDIC's existing Part 325 capital maintenance regulation. Therefore, investments in depository institution subsidiaries generally will not be deducted for risk-based capital purposes; rather, the assets and liabilities of such subsidiaries will be consolidated with those of the parent bank when calculating the risk-based capital ratio.

Regulatory Flexibility Act Analysis

The FDIC certifies that adoption of this statement of policy will not have a significant economic impact on a substantial number of small business entities, in this case small state nonmember banks, in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) While all insured banks will presumably be required to make some revisions to their reporting procedures to permit supervisory monitoring of risk-based capital ratios, the FDIC, in conjunction with the other Federal banking agencies, intends to adopt, after an opportunity for public comment, reporting procedures designed to minimize the burden on small institutions.

The risk-based capital framework set forth in this statement of policy is designed primarily to take accout of those practices, such as the increased use of off-balance sheet activities and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banks to raise additional capital, the statement of policy is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, State nonmember banks.

Accordingly, 12 CFR Part 325 is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1818(b), 1816, 1818(a), 1815(b), 1819(Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. A new Appendix A is added to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

Capital adequacy is one of the critical factors that the FDIC is required to analyze when taking action on various types of applications and when conducting supervisory activities related to the safety and soundness of individual banks and the banking system. In view of this, the FDIC's Board of Directors has adopted Part 325 of its regulations, which sets forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is in an unsafe or unsound condition by reason of the amount of its capital.

This capital maintenance regulation was designed to establish, in conjunction with other Federal bank regulatory agencies, uniform capital standards for all federally-regulated banking organizations, regardless of size. The uniform capital standards were based on ratios of capital to total assets. While those leverage ratios have served as a useful tool for assessing capital adequacy, the FDIC believes there is a need for a capital measure that is more explicitly and systematically sensitive to the risk profiles of individual banks. As a result, the FDIC's Board of Directors has adopted this Statement of Policy on Risk-Based Capital to supplement the Part 325 regulation. This statement of policy does not replace or eliminate the existing Part 325 capital-to-total assets leverage ratios. Once the risk-based capital framework is implemented, the FDIC will consider whether the Part 325 definitions of capital for leverage purposes and the minimum leverage ratios should be amended.

The framework set forth in this statement of policy consists of (1) a *definition of capital* for risk-based capital purposes, (2) a system for calculating *risk-weighted assets* by assigning assets and off-balance sheet items to broad risk categories, and (3) a schedule, which includes transitional arrangements during a phase-in period, for achieving a *minimum supervisory ratio* of capital to risk weighted assets. A bank's risk-based capital ratio is calculated by dividing its qualifying total capital base (the numerator of the ratio) by its risk-weighted assets (the denominator).[1] Table I outlines the definition of capital and provides a general explanation of how the risk-based capital ratio is calculated, Table II summarizes the risk weights and risk categories, and Table III sets forth the credit conversation factors for off-balance sheet items. Additional explanations of the capital definitions, the risk-weighted asset calculations, and the minimum risk-based capital ratio guidelines are provided in Sections I, II and III of this statement of policy.

This statement of policy applies to all *FDIC-insured state-chartered banks* (excluding insured branches of foreign banks) that are *not* members of the Federal Reserve System, hereafter referred to as "state nonmember banks," regardless of size, and to all circumstances in which the FDIC is required to evaluate the capital of a banking

[1] Period-end amounts, rather than average balances, normally will be used when calculating risk-based capital ratios. However, on a case-by-case basis, ratios based on average balances may also be required if supervisory concerns render it appropriate.

organization. Therefore, the risk-based capital framework set forth in this statement of policy will be used in the examination and supervisory process as well as in the analysis of applications that the FDIC is required to act upon.

The risk-based capital ratio focuses principally on broad categories of credit risk; however, the ratio does not take account of many other factors that can affect a bank's financial condition. These factors include overall interest rate risk exposure; liquidity, funding and market risks; the quality and level of earnings; investment or loan portfolio concentrations; the quality of loans and investments; the effectiveness of loan and investment policies; and management's overall ability to monitor and control financial and operating risks. In addition to evaluating capital ratios, an overall assessment of capital adequacy must take account of each of these other factors, including, in particular, the level and severity of problem and adversely classified assets. For this reason, the final supervisory judgment on a bank's capital adequacy may differ significantly from the conclusions that might be drawn soley from the absolute level of the bank's risk-based capital ratio.

In light of these other considerations, banks generally are expected to operate above the minimum risk-based capital ratio. Banks contemplating significant expansion plans, as well as those institutions with high or inordinate levels of risk, should hold capital commensurate with the level and nature of the risks to which they are exposed.

I. Definition of Capital for the Risk-Based Capital Ratio

A bank's qualifying total capital base consists of two types of capital elements: "core capital elements" (Tier 1) and "supplementary capital elements" (Tier 2). To qualify as an element of Tier 1 or Tier 2 capital, a capital instrument should not contain or be subject to any conditions, covenants, terms, restrictions, or provisions that are inconsistent with safe and sound banking practices.

A. The Components of Qualifying Capital (see Table I)

1. *Core capital elements (Tier 1)* consists of:

—Common stockholders' equity capital (includes common stock and any related surplus, undivided profits, disclosed capital reserves that represent a segregation of undivided profits, and foreign currency translation adjustments; less net unrealized losses on marketable equity securities);

—Noncumulative perpetual preferred stock,[2] including any related surplus; and

—Minority interests in the equity capital accounts of consolidated subsidiaries.

At least 50 percent of the qualifying total capital base should consist of Tier 1 capital. *Core (Tier 1) capital* is defined as the sum of core capital elements [3] minus all intangible assets other than mortgage servicing rights.[4]

Although nonvoting common stock noncumulative perpetual preferred stock, and minority interests in the equity capital accounts of consolidated subsidiaries are normally included in Tier 1 capital, voting common stockholders' equity generally will be expected to be the dominant form of Tier 1 capital. Thus, banks should avoid undue reliance on nonvoting equity, preferred stock and minority interests.

Although minority interests in consolidated subsidiaries are generally included in regulatory capital, exceptions to this general rule will be made if the minority interests fail to provide meaningful capital support to the consolidated bank. Such a situation could arise if the minority interests are entitled to a preferred claim on essentially low risk assets of the subsidiary. Similarly, although intangible assets in the form of mortgage servicing rights are generally recognized for risk-based capital purposes, the deduction of part or all of the mortgage servicing rights may be required if the carrying amounts of these rights are excessive in relation to their market value or the level of the bank's capital accounts.

2. *Supplementary capital elements (Tier 2)* consist of:

—Allowances for loan and lease losses, up to a maximum of 1.25 percent of risk-weighted assets;

—Cumulative perpetual preferred stock, long-term preferred stock (original maturity of at least 20 years) and any related surplus;

—Perpetual preferred stock (and any related surplus) where the dividend is reset periodically based, in whole or part, on the bank's current credit standing, regardless of whether the dividends are cumulative or noncumulative;

—Hybrid capital instruments, including mandatory convertible debt securities; and

—Term subordinated debt and intermediate-term preferred stock (original average maturity of five years or more) and any related surplus.

The definition of supplementary capital does *not* include revaluation reserves or hidden reserves that represent unrealized appreciation on assets such as bank premises and equity securities. Although such reserves will not be explicitly recognized when calculating a bank's risk-based capital ratio, these reserves may be taken into account as additional factors when assessing a bank's overall capital adequacy.

The maximum amount of Tier 2 capital that may be recognized for risk-based capital purposes is limited to 100 percent of Tier 1 capital (after any deductions for disallowed intangibles). In addition, the combined amount of term subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Amounts in excess of these limits may be issued but are not included in the calculation of the risk-based capital ratio.

(a) *Allowance for loan and lease losses.* Allowances for loan and lease losses are reserves that have been established through a charge against earnings to absorb future losses on loans or lease financing receivables. Allowances for loan and lease losses exclude "allocated transfer risk reserves," [5] and reserves created against identified losses.

This risk-based capital framework provides a phasedown during the transition period of the extent to which the allowance for loan and lease losses may be included in an institution's capital base. By year-end 1990, the allowance for loan and lease losses, as an element of supplementary capital, may constitute no more than 1.5 percent of risk-weighted assets and, by year-end 1992, no more than 1.25 percent of risk-weighted assets.[6]

(b) *Preferred stock.* Perpetual preferred stock is defined as preferred stock that does not have a maturity date, that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. Long-term preferred stock includes limited-life preferred stock with an original maturity of 20 years or more, provided that the stock cannot be redeemed at the option of the holder prior to maturity, except with the prior approval of the FDIC.

Cumulative perpetual preferred stock and long-term preferred stock qualify for inclusion in supplementary capital provided that the instruments can absorb losses while the issuer operates as a going concern (a fundamental characteristic of equity capital) and provided the issuer has the option to defer payment of dividends on these instruments. Given these conditions, and the perpetual or long-term nature of the intruments, there is no limit on the amount of these preferred stock instruments that may be included with Tier 2 capital.

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[2] Preferred stock issues where the dividend is reset periodically based, in whole or in part, upon the bank's current credit standing, including but not limited to, auction rate, money market or remarketable preferred stock, are assigned to Tier 2 capital, regardless of whether the dividends are cumulative or noncumulative.

[3] In addition to the core capital elements, Tier 1 may also include certain supplementary capital elements during the transition period subject to certain limitations set forth in Section III of this statement of policy.

[4] An exception is allowed for intangible assets that are explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. These intangibles will be included in capital for risk-based capital purposes under the terms and conditions that are specifically approved by the FDIC.

[5] Allocated transfer risk reserves are reserves that have been established in accordance with Section 905(a) of the International Lending Supervision Act of 1983 against certain assets whose value has been found by the U.S. supervisory authorities to have been significantly impaired by protracted transfer risk problems.

[6] The amount of the allowance for loan and lease losses that may be included as a supplementary capital element is based on a percentage of gross risk-weighted assets. A bank may deduct reserves for loan and lease losses that are in excess of the amount permitted to be included in capital, as well as allocated transfer risk reserves, from gross risk-weighted assets when computing the denominator of the risk-based capital ratio.

Noncumulative perpetual preferred stock where the dividend is reset periodically based, in whole or in part, on the bank's current credit standing, including auction rate, money market, or remarketable preferred stock, are also assigned to Tier 2 capital without limit, provided the above conditions are met.

(c) *Hybrid capital instruments.* Hybrid capital instruments include instruments that have certain characteristics of both debt and equity. In order to be included as supplementary capital elements, these instruments should meet the following criteria:

(1) The instrument should be unsecured, subordinated to the claims of depositors and general creditors, and fully paid-up.

(2) The instrument should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC. This requirement implies that holders of such instruments may not accelerate the payment of principal except in the event of bankruptcy, insolvency, or reorganization.

(3) The instrument should be available to participate in losses while the issuer is operating as a going concern. (Term subordinated debt would not meet this requirement.) To satisfy this requirement, the instrument should convert to common or perpetual preferred stock in the event that the sum of the undivided profits and capital surplus accounts of the issuer results in a negative balance.

(4) The instrument should provide the option for the issuer to defer principal and interest payments if: (a) the issuer does not report a profit in the preceding annual period, defined as combined profits (i.e., net income) for the most recent four quarters, *and* (b) the issuer eliminates cash dividends on its common and preferred stock.

Mandatory convertible debt securities that meet the criteria set forth in 12 CFR 325.2(e) will qualify as hybrid capital instruments. There is no limit on the amount of hybrid capital instruments that may be included within Tier 2 capital.

(d) *Term subordinated debt and intermediate-term preferred stock.* The aggregate amount of term subordinated debt (excluding mandatory convertible debt securities) and intermediate-term preferred stock (including any related surplus) that may be treated as Tier 2 capital for risk-based capital purposes is limited to 50 percent of Tier 1 capital. Term subordinated debt and intermediate-term preferred stock should have an original average maturity of at least five years to qualify as supplementary capital and should not be redeemable at the option of the holder prior to maturity, except with the prior approval of the FDIC. To qualify as supplementary capital, term subordinated debt instruments issued by state nonmember banks should meet the criteria for subordinated debt set forth in 12 CFR 325.2(j), except that the minimum original maturity requirement is five years for risk-based capital purposes.

Discount of limited-life supplementary capital instruments. As a limited-life capital instrument approaches maturity, the instrument begins to take on charcteristics of a short-term obligation and becomes less like a component of capital. Therefore, for risk-based capital purposes, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in capital will be adjusted downward, or discounted, as the instruments approach maturity. Each limited-life capital instrument will be discounted by reducing the outstanding amount of the capital instrument eligible for inclusion as supplementary capital by a fifth of the original amount (less redemptions) each year during the instrument's last five years before maturity. Such instruments, therefore, will have no capital value when they have a remaining maturity of less than a year.

B. Deductions from Capital and Other Adjustments

Certain assets are deducted from a bank's capital base for the purpose of calculating the numerator of the risk-based capital ratio.[7] These assets include:

(1) All *intangible assets* other than mortgage servicing rights.[8] These disallowed intangibles are deducted from the core capital (Tier 1) elements.

(2) Investments in *unconsolidated* banking and finance subsidiaries.[9] This includes any equity or debt capital investments in banking or finance subsidaries if the subsidiaries are not consolidated for regulatory capital requirements.[10] Generally, these investments include equity and debt capital securities and any other instruments or commitments that are deemed to be capital of the subsidiary. These investments are deducted from the bank's total (Tier 1 plus Tier 2) capital base.

(3) Investments in *securities subsidiaries* established pursuant to 12 CFR 337.4. The FDIC may also consider deducting investments in other subsidiaries, either on a case-by-case basis or, as with securities subsidiaries, based on the general characteristics or functional nature of the subsidiaries.

(4) *Reciprocal holdings* of capital instruments of banks that represent intentional cross-holdings by the banks. These holdings are deducted from the bank's total capital base.

On a case-by-case basis, and in conjunction with supervisory examinations, other deductions from capital may also be required, including any adjustments deemed appropriate for assets classified as loss.

II. Procedures For Computing Risk-Weighted Assets

A. General Procedures

Under the risk-based capital framework, a bank's balance sheet assets and credit equivalent amounts of off-balance sheet items are assigned to one of four broad risk categories according to the obligor or, if relevent, the guarantor or the nature of the collateral. The aggregate dollar amount in each category is then multiplied by the risk weight assigned to that category. The resulting weighted values from each of the four risk categories are added together and this sum is the *risk-weighted assets* total that, as adjusted,[11] comprises the denominator of the risk-based capital ratio.

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[7] Any assets deducted from capital when computing the numerator of the risk-based capital ratio will also be excluded from risk-weighted assets when computing the denominator of the ratio.

[8] In addition to mortgage servicing rights, certain other intangibles may be allowed if explicitly approved by the FDIC as part of the bank's regulatory capital on a specific case basis. In evaluating whether other types of intangles should be recognized for regulatory capital purposes on a specific case basis, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) the separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset.

[9] For risk-based capital purposes, these subsidiaries are generally defined as any company that is primarily engaged in banking or finance and in which the bank, either directly or indirectly, owns more than 50 percent of the outstanding voting stock but does not consolidate the company for regulatory capital purposes. In addition to investments in unconsolidated banking and finance subsidiaries, the FDIC may, on a case-by-case basis, deduct investments in associated companies or joint ventures, which are generally defined as any companies in which the bank, either directly or indirectly, owns 20 to 50 percent of the outstanding voting stock. Alternatively, the FDIC may, in certain cases, apply an appropriate risk-weighted capital charge against a bank's proportionate interest in the assets of associated companies and joint ventures. The definitions for subsidiaries, associated companies and joint ventures are contained in the instructions for the preparation of the Consolidated Reports of Condition and Income.

[10] Consolidation requirements for regulatory capital purposes generally follow the consolidation requirements set forth in the instructions for preparation of the consolidated Reports of Condition and Income. However, although investments in subsidiaries representing majority ownership in another Federally-insured depository institution are not consolidated for purposes of the consolidated Reports of Condition and Income that are filed by the parent bank, they are generally consolidated for purposes of determining FDIC regulatory capital requirements. Therefore, investments in these depository institution subsidiaries generally will not be deducted for risk-based capital purposes; rather, assets and liabilities of such subsidiaries will be consolidated with those of the parent bank when calculating the risk-based capital ratio. In addition, although securities subsidiaries established pursuant to 12 CFR 337.4 are consolidated for Report of Condition and Income purposes, they are not consolidated for regulatory capital purposes.

[11] Any asset deducted from a bank's capital accounts when computing the numerator of the risk-based capital ratio will also be excluded from risk-weighted assets when calculating the denominator for the ratio.

The risk-weighted amounts for all off-balance sheet items are determined by a two-step process. First, the notional principal, or face value, amount of each off-balance sheet item generally is multiplied by a credit conversion factor to arrive at a balance sheet "credit equivalent amount." Second, the credit equivalent amount generally is assigned to the appropriate risk category, like any balance sheet asset, according to the obligor or, if relevant, the guarantor or the nature of the collateral.

B. Other Considerations

1. *Indirect Holdings of Assets*—Some of the assets on a bank's balance sheet may represent an indirect holding of a pool of assets; for example, *mutual funds*. An investment in shares of a mutual fund whose portfolio consists solely of various securities or money market instruments that, if held separately, would be assigned to different risk categories, generally is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold in accordance with its stated investment objectives, but in no case to the zero percent risk category. If, in order to maintain a necessary degree of liquidity, a fund is permitted to hold an insignificant amount of its investments in short-term, highly liquid assets that are of superior credit quality but that do not qualify for a preferential risk weight, such assets may generally be disregarded in determining the risk category into which the bank's holding in the overall fund should be assigned. Regardless of the composition of the fund's assets, if the fund is allowed to engage in any activities that appear speculative in nature (for example, use of futures, forwards, or option contracts for purposes other than to reduce interest rate risk) or if the fund has any other characteristics that are inconsistent with the preferential risk-weighting assigned to the fund's assets, holdings in the fund will be assigned to the 100 percent risk category.

2. *Collateral*—In determining risk weights of various assets, the only forms of collateral that are formally recognized by the risk-based capital framework are cash on deposit in the lending bank; securities issued or guaranteed by the central governments of the OECD-based group of countries,[12] U.S. Government agencies, or U.S. Government-sponsored agencies; and securities issued or guaranteed by multilateral lending institutions or regional development banks. Claims fully secured by such collateral are assigned to the 20 percent risk category. The extent to which these securities are recognized as collateral for risk-based capital purposes is determined by their current market value. If a claim is partially secured, the portion of the claim that is not covered by the collateral is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor.

3. *Guarantees*—Guarantees of the OECD and non-OECD central governments, U.S. Government agencies, U.S. Government-sponsored agencies, state and local governments of the OECD-based group of countries, multilateral lending institutions and regional development banks, U.S. depository institutions and foreign banks are also recognized. If a claim is partially guaranteed, the portion of the claim that is not fully covered by the guarantee is assigned to the risk category appropriate to the obligor or, if relevant, the collateral.

4. *Maturity*—Maturity is generally not a factor in assigning items to risk categories with the exceptions of claims on non-OECD banks, commitments, and interest rate and foreign exchange rate related contracts. Except for commitments, short-term is defined as one year or less *remaining* maturity and long-term is defined as over one year *remaining* maturity. In the case of commitments, short-term is defined as one year or less *original* maturity and long-term is defined as over one year original maturity.[13]

5. *Mortgage-Backed Securities*—Mortgage-backed securities, including pass-throughs and collateralized mortgage obligations (but not stripped mortgage-backed securities) that are issued or guaranteed by a U.S. Government agency or a U.S. Government-sponsored agency, normally are assigned to the risk weight category appropriate to the issuer or guarantor. Generally, a privately-issued mortgage-backed security is treated as essentially an indirect holding of the underlying assets, and assigned to the same risk category as the underlying assets, in accordance with the provisions and criteria spelled out in detail in the accompanying footnote;[14] however, such privately-issued mortgage-backed securities may not be assigned to the zero percent risk category. Privately-issued mortgage-backed securities whose structures do not comply with the specified provisions set forth in the footnote are assigned to the 100 percent risk category. In addition, any class of a mortgage-backed security that can absorb more than its *pro rata* share of loss without the whole issue being in default (for example, a subordinated class or residual interest) will also be assigned to the 100 percent risk weight category. All stripped mortgage-backed securities, including interest-only strips (IOs), principal-only strips (POs), and similar instruments, are assigned to the 100 percent risk weight category, regardless of the issuer or guarantor.

C. Risk Weights for Balance Sheet Assets (see Table II)

The risk-based capital framework contains four risk weight categories—0 percent, 20 percent, 50 percent and 100 percent. In general, if a particular item can be placed in more than one risk category, it is assigned to the category that has the lowest risk weight. An explanation of the components of each category follows:

Category 1—Zero Percent Risk Weight. This category includes cash (domestic and foreign) owned and held in all offices of the bank or in transit; balances due from Federal Reserve Banks and central banks in other OECD countries; local currency claims on or guaranteed by non-OECD central governments to the extent that the bank has liabilities booked in that currency; and gold bullion held in the bank's own vaults or in another bank's vaults on an allocated basis, to the extent it is offset by gold bullion liabilities.[15]

The zero percent risk category also includes direct claims[16] (including securities, loans, and leases) on, and the portions of claims that are unconditionally guaranteed by, OECD central governments[17] and U.S.

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[12] The OECD-based group of countries comprises all full members of the Organization for Economic Cooperation and Development (OECD), as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's General Arrangements to Borrow. The OECD includes the following countries: Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, Finland, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Saudi Arabia has concluded special lending arrangements with the IMF associated with the Fund's General Arrangements to Borrow.

[13] Through year-end 1992, remaining rather than original maturity may be used for determining term to maturity for commitments.

[14] A privately-issued mortgage-backed security may be treated as an indirect holding of the underlying assets provided that (1) the underlying assets are held by an independent trustee and the trustee has a first priority, perfected security interest in the underlying assets on behalf of the holders of the security, (2) either the holder of the security has an undivided *pro rata* ownership interest in the underlying mortgage assets or the trust or single purpose entity (or conduit) that issues the security has no liabilities unrelated to the issued securities, (3) the security is structured such that the cash flow from the underlying assets in all cases fully meets the cash flow requirements of the security without undue reliance on any reinvestment income, and (4) there is no material reinvestment risk associated with any funds awaiting distribution to the holders of the security. In addition, if the underlying assets of a mortgage-backed security are composed of more than one type of asset, the entire mortgage-backed security is generally assigned to the category appropriate to the highest risk-weighted asset underlying the issue.

[15] All other bullion holdings are to be assigned to the 100 percent risk weight category.

[16] For purposes of determining the appropriate risk weights for this risk-based capital framework, the terms "claims" and "securities" refer to loans or other *debt* obligations of the entity on whom the claim is held. Investments in the form of stock or equity holdings in commercial or financial firms are generally assigned to the 100 percent risk category.

[17] A central government is defined to include departments and ministries, including the central bank, of the central government. The U.S. central bank includes the 12 Federal Reserve Banks. The definition of central government does not include state, provincial or local governments or commercial enterprises owned by the central government. In addition, it does not include local government entities or commercial enterprises whose obligations are guaranteed by the central government. OECD central governments are defined as central governments of the OECD-based group of countries. Non-OECD central governments are defined as central governments of countries that do not belong to the OECD-based group of countries.

Government agencies.[18] Federal Reserve Bank stock also is included in this category.

Category 2—20 Percent Risk Weight. This category includes short-term claims (including demand deposits) on, and portions of short-term claims that are guaranteed [19] by, U.S. depository institutions [20] and foreign banks;[21] portions of claims collateralized by cash held in a segregated deposit account of the lending bank; cash items in process of collection, both foreign and domestic; and long-term claims on, and portions of long-term claims guaranteed by, U.S. depository institutions and OECD banks.[22]

This category also includes claims on, or portions of claims guaranteed by, U.S. Government-*sponsored* agencies;[23] and portions of claims (including repurchase agreements) collateralized by securities issued or guaranteed by OECD central governments, U.S. Government agencies, or U.S. Government-sponsored agencies. Also included in the 20 percent risk category are portions of claims that are conditionally guaranteed by OECD central governments and U.S. Government agencies.[24]

General obligation claims on, or portions of claims guaranteed by, the full faith and credit of states or other political subdivisions of the United States or other countries of the OECD-based group are also assigned to this 20 percent risk category.[25] In addition, this category includes claims on the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investment Bank, and other multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or contributing member, as well as portions of claims guaranteed by such organizations or collateralized by their securities.

Category 3—50 Percent Risk Weight. This category includes loans fully secured by first liens on *one-to-four family residential* properties,[26] either owner-occupied or rented, provided that such loans have been approved in accordance with prudent underwriting standards, including standards relating to the loan amount as a percent of the appraised value of the property,[27] and provided that the loans are not more than 90 days past due or carried in a nonaccrual status.[28]

Also included in this category are *privately-issued mortgage-backed securities* provided that: (1) the structure of the security meets the criteria described above for "Mortgage-Backed Securities;" (2) if the security is backed by a pool of conventional mortgages, *each* underlying mortgage meets the criteria described in this section for inclusion in the 50 percent risk weight category at the time the pool is originated; and (3) if the security is backed by privately-issued mortgage-backed securities, *each* underlying security qualifies for inclusion in the 50 percent risk category.[29]

This category also includes *revenue* (non-general obligation) bonds or similar obligations, including loans and leases, that are obligations of states or political subdivisions of the United States or other OECD countries, but for which the government entity is committed to repay the debt with revenues from the specific projects financed, rather than from general tax funds (e.g., municipal revenue bonds). In addition the credit equivalent amount of *interest rate* and *foreign exchange rate* related contracts that do not qualify for a lower risk weight are assigned to the 50 percent risk category.

Category 4—100 Percent Risk Weight. All assets not included in the above risk categories are assigned to this category, which comprises standard risk assets. Long-term claims on, or guaranteed by, non-OECD banks, and all claims on non-OECD central governments that entail some degree of transfer risk are assigned to the 100 percent risk category.[30]

This category also includes all claims on foreign and domestic private sector obligors that are not assigned to lower risk weight categories, including: loans to nondepository financial institutions and bank holding companies; claims on commercial firms owned by the public sector; customer liabilities to the bank on acceptances outstanding involving standard risk claims; [31]

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[18] For risk-based capital purposes U.S. Government agency is defined as an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. These agencies include the Government National Mortgage Association (GNMA), the Veterans Administration (VA), the Federal Housing Administration (FHA), the Farmers Home Administration (FHA), the Export-Import Bank (Exim Bank), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA). U.S. Government agencies generally do not directly issue securities to the public; however, a number of U.S. Government agencies, such as GNMA, guarantee securities that are publicly held.

[19] Claims guaranteed by U.S. depository institutions and foreign banks include risk participations in both bankers acceptances and standby letters of credit, as well as participations in commitments, that are *conveyed* to other U.S. depository institutions or foreign banks.

[20] U.S. depository institutions are defined to include branches (foreign and domestic) of federally-insured banks and depository institutions chartered and headquartered in the 50 states of the United States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. The definition encompasses banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic depository institutions, and U.S.-chartered depository institutions owned by foreigners. However, this definition excludes branches and agencies of foreign banks located in the U.S. and bank holding companies.

[21] Foreign banks are distinguished as either OECD banks or non-OECD banks. OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries (other than the U.S.) that belong to the OECD-based group of countries. Non-OECD banks include banks and their branches (foreign and domestic) organized under the laws of countries that do not belong to the OECD-based group of countries. For risk-based capital purposes, a bank is defined as an institution that engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authorities of the country of its organization or principal banking operations; receives deposits to a substantial extent in the regular course of business; and has the power to accept demand deposits. Claims on, or guaranteed by, a non-OECD central bank are treated as claims on a non-OECD bank, except for local currency claims on or guaranteed by a non-OECD central bank that are funded in local currency liabilities. The latter claims are assigned to the zero percent risk category.

[22] Long-term claims on, or guaranteed by, non-OECD banks and all claims on bank holding companies are assigned to the 100 percent risk weight category, as are holdings of bank-issued securities that qualify as capital of the issuing banks for risk-based capital purposes.

[23] For risk-based capital purposes, U.S. Government-sponsored agencies are defined as agencies originally established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress but whose debt obligations are *not explicitly* guaranteed by the full faith and credit of the U.S. Government. These agencies include the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Farm Credit System, the Federal Home Loan Bank System, and the Student Loan Marketing Association (SLMA). For risk-based capital purposes, claims on U.S. Government-sponsored agencies also include capital stock in a Federal Home Loan Bank that is held as a condition of membership in that Bank.

[24] For risk-based capital purposes, a conditional guarantee is deemed to exist if the validity of the guarantee by the OECD central government or the U.S. Government agency is dependent upon some affirmative action (e.g., servicing requirements on the part of the beneficiary of the guarantee). Portions of claims that are unconditionally guaranteed by OECD central governments or U.S. Government agencies are assigned to the zero percent risk category.

[25] Claims on, or guaranteed by, states or other political subdivisions of countries that do not belong to the OECD-based group of countries are to be placed in the 100 percent risk weight category.

[26] The types of properties that qualify as one-to-four family residential properties are listed in the instructions for preparation of the Consolidated Reports of Condition and Income. If a bank holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transactions will be treated as a single loan secured by a first lien.

[27] For risk-based capital purposes, the loan-to-value ratio generally is based upon the most current appraised value of the property. The appraisal should be performed in a manner consistent with the Federal banking agencies' real estate appraisal guidelines and with the bank's own appraisal guidelines.

[28] Real estate loans that do not meet all of the specified criteria or that are made for the purpose of property development are placed in the 100 percent risk category.

[29] Privately-issued mortgage-backed securities that do not meet these criteria or that do not qualify for a lower risk weight generally are assigned to the 100 percent risk weight category.

[30] Such assets include all non-local currency claims on non-OECD central governments and those portions of local currency claims on, or guaranteed by, non-OECD central governments that exceed the local currency liabilities held by the bank.

[31] Customer liabilities on acceptances outstanding involving non-standard risk claims, such as claims on U.S. depository institutions, are assigned to the risk category appropriate to the identity of the obligor or, if relevant, the nature of the collateral or guarantees backing the claim. Portions of acceptances conveyed as risk participations to U.S. depository institutions or

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investments in fixed assets, premises and other real estated owned; common and preferred stock of corporations, including stock acquired for debt previously contracted; commercial and consumer loans (except those loans assigned to lower risk categories due to recognized guarantees or collateral); real estate loans and mortgage-backed securities that do not meet the criteria for assignment to a lower risk weight (including any classes of mortgage-backed securities that can absorb more than their *pro rata* share of loss without the whole issue being in default, such as subordinated classes or residual interests); and all stripped mortgage-backed securities, including interest-only (IOs) and principal-only (POs) strips.

Also included in this category are industrial development bonds and similar obligations issued under the auspices of state or political subdivisions of the OECD-based group of countries for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest, and all obligations of states or political subdivisions of countries that do not belong to the OECD-based group of countries.

Unless already deducted from capital for risk-based capital purposes, the following assets also are included in the 100 percent risk category: investments in unconsolidated subsidiaries, joint ventures or associated companies; instruments that qualify as capital issued by other banks; and mortgage servicing rights and other allowed intangibles.

D. Conversion Factors for Off-Balance Sheet Items (see Table III)

The face amount of an off-balance sheet item is generally multiplied by a *credit conversion factor* and the resulting *credit equivalent amount* is assigned to the appropriate risk category according to the obligor or, if relevant, the guarantor or the nature of the collateral.

1. *Items With a 100 Percent Conversion Factor.* A 100 percent conversion factor applies to *direct credit substitutes*, which include *guarantees*, or equivalent instruments, backing *financial* claims, such as securities, loans or other financial obligations, or backing off-balance sheet items that require capital under the risk-based capital framework. These direct credit substitutes include *financial standby letters of credit*, or other equivalent irrevocable undertakings or surety arrangements, that effectively guarantee repayment of financial obligations such as: commercial paper, tax-exempt securities, commercial or individual loans or other debt obligations, or standby or commercial letters of credit.

For risk-based capital purposes, financial standby letters of credit (100 percent conversion factor) are distinguished from loan commitments (normally a 50 percent conversion factor) in that financial standbys are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) *fails to repay* an outstanding loan or debt instrument. A loan commitment, on the other hand, involves an obligation (with or without a material adverse change clause) of the bank to provide funds to its customer *in the normal course* of business should the customer seek to draw down the commitment.

Therefore, the distinguishing characteristics of a financial standby letter of credit for risk-based capital purposes is the combination of irrevocability with the notion that funding is triggered by some failure to repay or perform on a financial obligation. Thus, any commitment (by whatever name) that involves an *irrevocable* obligation to make a payment to the customer or to a third party in the event the customer *fails to repay* an outstanding debt obligation will be treated, for risk-based capital purposes, as a financial standby letter of credit and assigned a 100 percent conversion factor. (Performance-related standby letters of credit are assigned a conversion factor of 50 percent.)

A bank that has conveyed *risk participation* [32] in a direct credit substitute to a third party should convert the full amont of the direct credit substitute at a 100 percent conversion factor without deducting the risk participations conveyed. However, portions of direct credit substitutes that have been conveyed as risk participations to U.S. depository institutions and OECD banks may than be assigned to the 20 percent risk category that is appropriate for claims guaranteed by U.S. depository institutions and OECD banks, rather than to the risk category appropriate to the account party obligor.[33] A bank acquiring a risk participation in a direct credit substitute or bankers acceptance should convert the participation at 100 percent and then assign the credit equivalent amount to the risk category that is appropriate to the account party obligor or, if relevant, the guarantor or the nature of the collateral.

In the case of direct credit substitutes that are structured in the form of a *syndication* as defined in the instructions for the preparation of the Consolidated Reports of Condition and Income (that is, where each bank is obligated only for its *pro rata* share of the risk and there is no recourse to the originating bank), each bank will only include its *pro rata* share of the direct credit substitute in its risk-based capital calculation.

Sale and repurchase agreements and *asset sales with recourse*, if not already included on the balance sheet, and *forward agreements* are also converted at 100 percent. For risk-based capital purposes, the definition of sales of assets with recourse, including the sales of participations in pools of residential mortgages, is consistent with the definition contained in the instructions for the preparation of the Consolidated Reports of Condition and Income. "Loan Strips" and similar arrangements involving short-term loans sold by a bank without direct recourse but subject to long-term loan commitments by the bank are accorded the same treatment as assets sold with recourse Forward agreements are legally binding contractual obligations to purchase assets with drawdown which is *certain* at a specified future date. These obligations include forward purchases, forward deposits placed, and partly-paid shares and securities but do not include forward foreign exchange rate contracts or commitments to make residential mortage loans.

Securities lent by a bank are treated in one of two ways, depending on whether the lender is exposed to risk of loss. If a bank, as agent for a customer, lends the customer's securities and is not obligated to indemnify the customer against loss, the securities lending transaction is excluded from the risk based capital calculation. On the other hand, if a bank lends its own securities, or acting as agent lends the customer's securities and agrees to indemnify the customer against loss, the transaction is converted at 100 percent and assigned to the risk weight category appropriate to the obligor or, if applicable, to the collateral delivered to the lending bank or to the independent custodian acting on the lending bank's behalf.

2. *Items With a 50 Percent Conversion Factor.* Transaction-related contingencies are to be converted at 50 percent. Such contingencies include bid bonds, performance bonds, warranties, and *performance standby letters of credit* related to particular transactions, as well as acquisitions of risk participations in performance standby letters of credits. Performance standby letters of credit (performance bonds) are irrevocable obligations of the bank to pay a third-party beneficiary when a customer (account party) *fails to perform* on some contractual nonfinancial obligation. Thus, performance standby letters of credit represent obligations backing the performance of *nonfinancial* or *commercial* contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit include arrangements backing, among other things, subcontractors' and suppliers' performance, labor and materials contracts, and construction bids.

The unused portion of *commitments* with an *original* maturity exceeding *one year*,[34] including underwriting commitments and commercial and consumer credit commitments, also are to be converted at 50 percent. Original maturity is defined as the length of time between the date the commitment is issued and the earliest date on which: (1) the bank can at its option, *unconditionally* (without cause) cancel the commitment,[35] and (2) the bank is scheduled

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foreign banks should be assigned to the 20 percent risk category that is appropriate for short-term claims guaranteed by U.S. depository institutions and foreign banks.

[32] That is, participations in which the originating bank remains liable to the beneficiary for the full amount of the direct credit substitute if the party that has acquired the participation fails to pay when the instrument is drawn upon.

[33] Risk participations with a remaining maturity of one year or less that are conveyed to non-OECD banks are also assigned to the 20 percent risk weight category.

[34] Remaining maturity may be used for determining the term to maturity for loan commitments through year-end 1992; thereafter, original maturity shall be used.

[35] In the case of home equity or mortgage lines of credit secured by liens on one-to-four family residential properties, a bank is deemed able to

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to (and as a normal practice actually does) review the facility to determine whether or not it should be extended and, on at least an annual basis, continues to regularly review the facility. Facilities that are unconditionally cancelable (without cause) at any time by the bank are not deemed to be commitments, provided the bank makes a separate credit decision before each drawing under the facility.

Commitments, for risk-based capital purposes, are defined as any arrangements that obligate a bank to extend credit in the form of loans or lease financing receivables; to purchase loans, securities, or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity and mortgage lines of credit, and similar transactions. Normally, commitments involve a written contract or agreement and a commitment fee, or some other form of consideration. Commitments are included in risk-weighted assets regardless of whether they contain "material adverse change" clauses or other provisions that are intended to relieve the issuer of its funding obligation under certain conditions.

In the case of commitments structured as syndications where the bank is obligated only for its *pro rata* share, the risk-based capital framework includes only the bank's proportional share of such commitments. Thus, after a commitment has been converted at 50 percent, portions of commitments that have been conveyed to other U.S. depository institutions or OECD banks, but for which the originating bank retains the full obligation to the borrower if the participating bank fails to pay when the commitment is drawn upon, will be assigned to the 20 risk category. The acquisition of such a participation in a commitment would be converted at 50 percent and the credit equivalent amount would be assigned to the risk category that is appropriate for the account party obligor or, if relevant, to the nature of the collateral or guarantees.

Revolving underwriting facilities (RUFs), note issuance facilities (NIFs), and other similar arrangements also are converted at 50 percent. These are facilities under which a borrower can issue on a revolving basis short-term notes in its own name, but for which the underwriting banks have a legally binding commitment either to purchase any notes the borrower is unable to sell by the rollover date or to advance funds to the borrower.

3. *Items With a 20 Percent Conversion Factor.* Short-term, self-liquidating, trade-related contingencies which arise from the movement of goods are converted at 20 percent. Such contingencies include *commercial letters of credit* and other documentary letters of credit collateralized by the underlying shipments.

4. *Items With a Zero Percent Conversion Factor.* These include unused portions of *commitments* with an *original maturity* of *one year or less*, or which are *unconditionally cancellable* at any time (provided a separate credit decision is made before each drawing under the facility). Unused portions of *retail credit card lines* and related plans are deemed to be short-term commitments if the bank, in accordance with applicable law, has the unconditional option to cancel the credit line at any time.

E. Conversion Factors and Risk Weights for Interest Rate and Foreign Exchange Rate Related Contracts

Credit equivalent amounts are to be computed for each of the following off-balance sheet interest rate and foreign exchange rate related instruments:

Interest Rate Related Contracts:

(1) Single currency interest rate swaps.

(2) Basis swaps.

(3) Forward rate agreements.

(4) Interest rate options purchased (including caps, collars and floors purchased).

(5) Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

Foreign Exchange Rate Related Contracts:

(1) Cross-Currency interest rate swaps.

(2) Forward foreign exchange rate contracts.

(3) Currency options purchased.

(4) Any other instrument that gives rise to similar credit risks.

Over-the-counter options purchased are included in the risk-based capital framework and treated in the same way as the other interest rate and foreign exchange rate contracts. However, foreign exchange rate contracts with an original maturity of fourteen calendar days or less and insturments traded on exchanges that require daily payment of variation margin are excluded.

1. *Credit Equivalent Amounts for Interest Rate and Foreign Exchange Rate Contracts.* Credit equivalent amounts are to be calculated for each individual contract of the types listed above. To calculate the credit equivalent amount of its off-balance sheet interest rate and foreign exchange rate instruments, a bank should, for each contract, sum:

(a) the mark-to-market value [36] (positive values only) of the contract (that is, its *current* credit exposure or replacement cost) and:

(b) an estimate of the *potential* future increases in credit exposure over the remaining life of the instrument.

For risk-based capital purposes, potential future credit exposure on a contract is determined by multiplying the notional principal amount of the contract, including contracts with negative mark-to-market values, by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts	Foreign exchange rate contracts
One year or less	–0–	1.0%
Over one year	0.5%	5.0%

Because foreign exchange rate contracts involve an exchange of principal upon maturity, and exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

No potential future credit exposure should be calculated for single currency interest rate swaps on which payments are based upon two floating rate indices (floating/floating or basis swaps); rather, the credit equivalent amount of these contracts should be calculated solely on the basis of their mark-to-market values (positive values only).

2. *Risk Weights for Interest Rate and Foreign Exchange Rate Contracts.* Once the credit equivalent amount for an interest rate and foreign exchange rate instrument has been determined, that amount generally should be assigned to a risk weight category according to the identity of the counterparty or, if relevant, the nature of any collateral or guarantees. However, the *maximum* risk weight that will be applied to the credit equivalent amount of such instruments is 50 percent.

In certain cases, credit exposures arising from the interest rate and foreign exchange rate instruments may already be reflected, in part, on the balance sheet. To avoid the double counting of such exposures in the assessment of capital adequacy and in the assigning of risk weights, counterparty credit exposures arising from these instruments may need to be excluded from balance sheet assets when calculating a bank's total risk-weighted asset figure. However, for the purposes of the risk-based capital framework, the *netting* of offsetting positions in swaps and similar contracts involving the same counterparty is recognized only when accomplished through netting by novation.[37] Other types of netting arrangements will not be recognized.

III. Minimum Risk-Based Capital Ratio

A. Minimum Risk-Based Capital Ratio After Transition Period

Banks generally will be expected to meet a *minimum* ratio of qualifying total capital to risk-weighted assets of *8 percent*, of which at least 4 percentage points should be in the form of core capital (Tier 1). Any bank that does not meet the minimum risk-based

unconditionally cancel the commitment if, at its option, it can prohibit additional extensions of credit, reduce the credit line, and terminate the commitment to the full extent permitted by relevant Federal law

[36] Mark-to-market values should be measured in dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in both interest (or foreign exchange) rates and in counterparty credit quality.

[37] For risk-based capital purposes, netting by novation involves a written bilateral contract between two counterparties under which any obligation to the other counterparty to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations.

capital ratio, or whose capital is otherwise considered inadequate, generally will be expected to develop and implement a capital plan for achieving an adequate level of capital, consistent with the provisions of this risk-based capital framework, the specific circumstances affecting the individual bank, and the requirements of any related agreements between the bank and the FDIC.

B. Transitional Arrangements

The transition period commences with the adoption of this statement of policy and ends on December 31, 1992. Initially, this risk-based capital framework does not establish a minimum level of capital. However, by year-end 1990, banks generally will be expected to meet a minimum total capital to risk-weighted assets ratio of 7.25 percent, at least one-half of which should be in the form of Tier 1 capital. For purposes of calculating this interim minimum ratio, the amount of the allowance for loan and lease losses that may be included as a supplementary capital element is limited to 1.5 percent of risk-weighted assets. In addition, up to 10 percent of a bank's Tier 1 capital (before any deduction for disallowed intangibles) may consist of supplementary capital elements. Thus, the 7.25 percent interim ratio implies a minimum ratio of Tier 1 capital to risk-weighted assets of approximately 3.6 percent (or one-half of 7.25) and a minimum ratio of core capital elements to risk-weighted assets of 3.25 percent (or nine-tenths of the Tier 1 capital ratio). By the end of 1992, a state nonmember bank's Tier 1 capital should consist solely of core capital elements.

During the transition period, banks should monitor their risk-based capital ratios and work toward achieving the interim and final risk-based capital ratios. Any bank that has risk-based capital ratios of less than 4 percent Tier 1 capital and 8 percent total capital should develop and implement a capital plan for achieving those minimum standards by December 31, 1992, and for achieving the interim minimum ratio of 7.25 percent by December 31, 1990. Banks that at present have a risk-based capital ratio in excess of 8 percent generally should not take any action that would cause the ratio to fall below 8 percent.

TABLE I.—DEFINITION OF QUALIFYING CAPITAL

Components	Minimum Requirements and Limitations After Transition Period.
Core Capital (Tier 1)	Must equal or exceed 4% of risk-weighted assets.
Common stockholders' equity capital.	No limit.[1]
Noncumulative perpetual preferred stock and any related surplus.	No limit.[1]
Minority interests in equity capital accounts of consolidated subsidiaries.	No limit.[1]
Less: All intangible assets other than mortgage servicing rights [2].	([3])
Supplementary Capital (Tier 2).	Total of Tier 2 is limited to 100% of Tier 1.[3]
Allowance for loan and lease losses.	Limited to 1.25% of risk-weighted assets.[3]
Cumulative perpetual and long-term preferred stock (original maturity of 20 years or more), and any related surplus.	No limit within Tier 2; long-term preferred is amortized for capital purposes as it approaches maturity.
Auction rate and similar preferred stock (both cumulative and non-cumulative).	No limit within Tier 2.
Hybrid capital instruments (including mandatory convertible debt securities).	No limit within Tier 2.
Term subordinated debt and intermediate-term preferred stock (original weighted average maturity of 5 years or more).	Term subordinated debt and intermediate-term preferred stock are limited to 50% of Tier 1 [3] and amortized for capital purposes as they approach maturity.
Deductions (from the sum of Tier 1 plus Tier 2).	
Investments in banking and finance subsidiaries that are not consolidated for regulatory capital purposes.	
Intentional, reciprocal cross-holdings of capital securities issued by banks.	
Other deductions (such as investments in other subsidiaries or in joint ventures) as determined by supervisory authority.	On case-by-case basis or as matter of policy after formal consideration of relevant issues.
Total Capital (Tier 1 + Tier 2 − Deductions).	Must equal or exceed 8% of risk-weighted assets.

[1] No express limits are placed on the amounts of nonvoting common, noncumulative perpetual preferred stock, minority interests, and mortgage servicing rights that may be recognized as part of Tier 1 capital. However, voting common stockholders' equity capital generally will be expected to be the dominant form of Tier 1 capital and banks should avoid undue reliance on other Tier 1 capital elements.

[2] In addition to mortgage servicing rights, certain other intangibles may be allowed in core capital if explicitly approved by the FDIC on a specific case basis. All deductions are for capital purposes only; deductions would not affect accounting treatment.

[3] Amounts in excess of limitations are permitted but do not qualify as capital.

Calculation of the Risk-Based Capital Ratio

When calculating the risk-based capital ratio under the framework set forth in this statement of policy, qualifying total capital (the numerator) is divided by risk-weighted assets (the denominator). The process of determining the numerator for the ratio is summarized in Table I. The calculation of the denominator is based on the risk weights and conversion factors that are summarized in Tables II and III.

When determining the amount of risk-weighted assets, balance sheet assets are assigned an appropriate risk weight (see Table II) and off-balance sheet items are first converted to a credit equivalent amount (see Table III) and then assigned to one of the risk weight categories set forth in Table II.

The balance sheet assets and the credit equivalent amount of off-balance sheet items are then multiplied by the appropriate risk weight percentages and the sum of these risk-weighted amounts is the gross risk-weighted asset figure used in determining the denominator of the risk-based capital ratio. Any items deducted from capital when computing the amount of qualifying capital may also be excluded from risk-weighted assets when calculating the denominator for the risk-based capital ratio.

Table II.—Summary of Risk Weights and Risk Categories

Category 1—Zero Percent Risk Weight

(1) Cash (domestic and foreign).

(2) Balances due from Federal Reserve Banks and central banks in other OECD countries.

(3) Direct claims on, and portions of claims unconditionally guaranteed by, the U.S. Treasury, U.S. Government agencies,[1] or central governments in other OECD countries.

(4) Direct local currency claims on, or guaranteed by, non-OECD central governments (including non-OECD central banks), to the extent the bank has liabilities booked in that currency.

(5) Gold bullion held in the bank's own vaults or in another bank's vaults on an allocated basis, to the extent that it is offset by gold bullion liabilities

(6) Federal Reserve Bank stock.

Category 2—20 Percent Risk Weight

(1) Cash items in the process of collection.

(2) All claims (long- and short-term) on, and portions of claims (long- and short-term) guaranteed by, U.S. depository institutions and OECD banks.

(3) Short-term (remaining maturity of one year or less) claims on, and portions of short-term claims guaranteed by, non-OECD banks, including non-OECD central banks.

(4) Portions of loans an dother claims conditionally guaranteed by the U.S. Treasury, U.S. Government agencies,[1] or central governments in other OECD countries.

[1] For the purpose of calculating the risk-based capital ratio, a U.S. Government agency is defined as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the U.S. Government.

(5) Securities and other claims on, and portions of claims guaranteed by, U.S. Government-*sponsored* agencies.[2]

(6) Portions of loans and other claims (including repurchase agreements) collateralized [3] by securities issued or guaranteed by the U.S. Treasury, U.S. Government agencies, U.S. Government-sponsored agencies or central governments in other OECD countries.

(7) Portions of loans and other claims collateralized [3] by cash on deposit in the lending bank.

(8) General obligation claims on, and portions of claims guaranteed by, the full faith and credit of states or other political subdivisions of OECD countries, including U.S. state and local governments.

(9) Claims on, and portions of claims guaranteed by, official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or a contributing member.

(10) Portions of claims collateralized [3] by securities issued by official multilateral lending institutions or regional development institutions in which the U.S. Government is a shareholder or contributing member.

(11) Privately-issued mortgage-backed securities representing indirect ownership of U.S. Government agency or U.S. Government-sponsored agency securities.

(12) Investments in shares of mutual funds whose portfolios are permitted to hold only assets that qualify for the zero or 20 percent risk categories.

Category 3—50 Percent Risk Weight

(1) Loans fully secured by first liens on one-to-four family residential properties, provided that the loans were approved in accordance with prudent underwriting standards and are not past due 90 days or more or carried on a nonaccrual status.

(2) Certain privately-issued mortgage-backed securities representing indirect ownership of a pool of residential loans that meet the criteria for a 50 percent risk weight.

(3) Revenue bonds or similar obligations, including loans and leases, that are obligations of U.S. state or political subdivisions of the United States or other OECD countries but for which the government entity is committed to repay the debt only out of revenues from the specific projects financed.

(4) Credit equivalent amounts of interest rate and foreign exchange rate related contracts, except for those assigned to a lower risk category.

Category 4—100 Percent Risk Weight

(1) All other claims on private obligors.

(2) Claims on, or guaranteed by, non-OECD banks with a remaining maturity exceeding one year.

(3) Claims on non-OECD central governments that are not included in item 4 of Category 1 or item 3 of Category 2, and all claims on non-OECD state and local governments.

(4) Obligations issued by U.S. state or local governments or other OECD local governments (including industrial development authorities and similar entities) that are repayable solely by a private party or enterprise.

(5) Premises, plant, and equipment; other fixed assets; and other real estate owned.

(6) Investments in any unconsolidated subsidiaries, joint ventures, or associated companies—if not deducted from capital.

(7) Instruments issued by other banking organizations that qualify as capital.

(8) Claims on commercial firms owned by the U.S. Government or foreign governments.

(9) All other assets, including any intangible assets that are not deducted from capital, and the credit equivalent amounts [4] of off-balance sheet items not assigned to a lower risk category.

Table III.—Credit Conversion Factors for Off-Balance Sheet Items

100 Percent Conversion Factor

(1) Direct credit substitutes, including general guarantees of indebtedness and guarantee-type instruments, such as standby letters of credit that serve as financial guarantees for, or support the repayment of, loans, securities or commercial letters of credit.

(2) Acquisitions of risk participations in bankers acceptances and in such direct credit substitutes and financial standby letters of credit.

(3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(4) Forward agreements representing contractual obligations to purchase assets, including financing facilities, with drawdown *certain* at a specified future date.

(5) Securities lent, if the lending bank is exposed to risk of loss.

50 Percent Conversion Factor

(1) Transaction-related contingencies, including bid bonds, performance bonds, warranties, and performance standby letters of credit backing the nonfinancial performance of other parties.

(2) Unused portions of commitments with an original maturity [1] exceeding one year, including underwriting commitments and commercial credit lines.

(3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements.

20 Percent Conversion Factor

(1) Short-term, self-liquidating, trade-related contingencies, including commercial letters of credit.

Zero Percent Conversion Factor

(1) Unused portions of commitments with an original maturity [1] of one year or less.

(2) Unused portions of commitments (regardless of maturity) which are unconditionally cancelable at any time, provided a separate credit decision is made before each drawing.

Credit Conversion for Interest Rate and Foreign Exchange Rate Related Contracts

The total replacement cost of contracts (obtained by summing the positive mark-to-market values of contracts) is added to a measure of future potential increases in credit exposure. This future potential credit exposure measure is calculated by multiplying the total notional value of contracts by one of the following credit conversion factors, as appropriate:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
One year or less	0	1.0
Over one year	0.5	5.0

No potential exposure is calculated for single currency interest rate contracts on which payments are made based on two floating rate indices (floating/floating or basis swaps); the credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values. Exchange rate contracts with an original maturity of fourteen calendar days or less are excluded from the risk-based capital framework. Instruments traded on exchanges that require daily payment of variation margin also are excluded. Multiple contracts with the same counterparty may be netted for risk-based capital purposes only if the contracts are subject to netting by novation.

By order of the Board of Directors this 14th day of March, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-6630 Filed 3-20-89; 8:45 am]

BILLING CODE 6714-01-M

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[2] For the purpose of calculating the risk-based capital ratio, a U.S. Government-*sponsored* agency is defined as an agency originally established or chartered to serve public purposes specified by the U.S. Congress but whose obligations are not *explicitly* guaranteed by the full faith and credit of the U.S. Government.

[3] Degree of collateralization is determined by current market value.

[4] For each off-balance sheet item, a conversion factor (see Table III) must be applied to determine the "credit equivalent amount" prior to assigning the off-balance sheet item to a risk weight category.

[1] Remaining maturity may be used until year-end 1990.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90361-9061]

Electronic Computers; Amendments to Export Controls Based on COCOM Review

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the

Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. This rule amends Export Control Commodity Number 1565A of the CCL, which controls electronic computers and "related equipment." The effect will be to free additional equipment from control and simplify the licensing process for other computer equipment.

These amendments have resulted from a review of strategic controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM). Such multilateral controls restrict the availability of strategic items to controlled countries.

EFFECTIVE DATE: This rule is effective March 9, 1989.

FOR FURTHER INFORMATION CONTACT: Raj Dheer, Computer Systems Technical Center, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–2279.

SUPPLEMENTARY INFORMATION: Under ECCN 1565A, otherwise uncontrolled equipment becomes controlled if a computer of a specified capability is "incorporated" in the equipment. A computer is "incorporated" if it can feasibly be removed or used for other purposes and is essential to the operation of the equipment. Currently, items of equipment having incorporated computers with a "total processing data rate" not exceeding 15 million bits per second are not subject to controls. This rule increases this level to 28 million bits per second. This change and the change described in paragraph 3 below generally will affect personal computers up to those based on the 6 MHz version of the 80286 microprocessor, the 10 MHz version of the 68000 microprocessor and comparable machines.

The "total processing data rate" of "digital computers" "incorporated" in medical systems that are likely to be approved for export to controlled countries is raised from 43 to 54 million bits per second. This change will increase the number of medical systems containing computers that will be eligible for approval. This change generally will affect computers based on the 12 MHz version of the 80286 microprocessor and comparable machines.

The total processing data rate" for "digital computers" eligible for shipment without regard to quantity limitations is raised from 20 to 28 million bits per second. ECCN 1565A contains Advisory Notes that identify certain computers that are likely to receive a license for export to satisfactory end-users in controlled countries. Under Advisory Note 9, computers are excluded from this more favorable treatment if, among other things, the "total processing data rate" exceeds 20 million bits per second and the "cumulative processing data rate" of all the equipment involved in one transaction exceeds 285 million bits per second. The cumulative limitation is not triggered if the processing data rate is below the stated level. This rule increases the permissible processing data rate to 28 million bits per second.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0013.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule implements regulatory changes based on COCOM review and is not an imposition of controls. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 700–799) are amended as follows:

PART 799—[AMENDED]

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

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended as follows:

In paragraph (h)(2)(ii)(D) of the List of Electronic Computers and Related Equipment Controlled by ECCN 1565A, the phrase "does not exceed 15 million bit/s" is revised to read "does not exceed 28 million bit/s";

In Advisory Note 5(c), the phrase "does not exceed 43 million bit per second" is revised to read "does not exceed 54 million bit per second"; and

In Advisory Note 9(c)(2)(i), the phrase "20 million bit/s" is revised to read "28 million bit/s".

Dated: March 16, 1989.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 89–6547 Filed 3–16–89; 1:38 pm]

BILLING CODE 3510–DT–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 7

[Docket No. 87N–0082]

Infant Formula Recalls

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing the regulations on infant formula recalls in

Subpart D of Part 7 (21 CFR Part 7) of its regulations. In the **Federal Register** of January 27, 1989 (54 FR 4006), FDA determined that its recall requirements for infant formula should be codifed in Part 107 Infant Formula (21 CFR Part 107) as Subpart E. The agency, however, failed to remove the regulations in Subpart D of Part 7 in that publication. This action will remove these outdated regulations and eliminate any ambiguity regarding the enforcement of, or compliance with, infant formula recall requirements.

EFFECTIVE DATE: March 21, 1989.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Office of Regulatory Affairs (HFC–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 1989 (54 FR 4006), FDA published a final rule amending its regulations for infant formula recall requirements. Although the regulations were initially proposed to be codifed in Part 7—Enforcement Policies (21 CFR Part 7), as Subpart D, consisting of §§ 7.68 to 7.76, FDA stated in the preamble of the final rule that it was more appropriate to codify these regulations in Part 107—Infant Formula (21 CFR Part 107), as a new Subpart E, consisting of §§ 107.200 to 107.280. The agency further stated that the section headings initially proposed in Part 7 remained essentially the same in Part 107. In the publication of January 27, 1989, the agency failed, through an oversight, to remove the regulations in Subpart D of Part 7. Therefore, this document removes Subpart D of Part 7 to eliminate those regulations that have been superseded by infant formula recall regulations codified in Subpart E of Part 107.

Because FDA is merely removing outdated regulations, it has determined that notice and public procedure on this final rule are unnecessary.

In accordance with Executive Order 12291, FDA has analyzed the potential economic effects of this final rule and has determined that the rule is not a major rule as defined by the Order. Because the amendments are not substantive, there is no economic impact from them.

The agency has determined under 21 CFR 25.24(a) (8) and (9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List Subjects in 21 CFR Part 7

Administrative practice and procedure, Consumer protection, Infants and children, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 7 is amended as follows:

PART 7—ENFORCEMENT POLICY

1. The authority citation for 21 CFR Part 7 continues to read as follows:

Authority: Secs. 305, 701(a), 52 Stat. 1045, 1055 (21 U.S.C. 335, 371 (a)).

§§ 7.70 through 7.75 [Removed]

2. Subpart D—Infant Formula Recalls, consisting of §§ 7.70 through 7.75, is removed.

Dated: March 15, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–6531 Filed 3–20–89; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone and Lincomycin

AGENCY: Food and Drug Aministration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of halofuginone hydrobromide in combination with lincomycin in Type C broiler feeds for the prevention of coccidiosis and for improved feed efficiency.

EFFECTIVE DATE: March 21, 1989.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, has filed NADA 140–340 providing for combining separately approved halofuginone hydrobromide (Stenerol ®) and lincomcyin (Lincomix ®) Type A medicated articles to make Type C medicated feeds containing 2.72 grams of halofuginone hydrobromide per ton, and 2 to 4 grams of lincomycin per ton for broilers. The type C medicated feeds are for the prevention of coccidiosis cause by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for improved feed efficiency.

The application is approved and the regulations in 21 CFR 558.265 are amended by adding new paragraph (c)(7) and in 21 CFR 558.325 by adding new paragraph (c)(3)(xiv) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither and environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.265 is amended by adding new paragraph (c)(7) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) * * *

(7) *Amount per ton.* Halofuginone 2.72 grams (0.0003 percent) plus lincomycin 2 to 4 grams.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and for improved feed efficiency.

(ii) *Limitations.* Feed continously as sole ration; withdraw 4 days before slaughter; do not feed to layers; avoid

contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

3. Section 558.325 is amended by adding new paragraph (c)(3)(xiv) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(c) * * *

(3) * * *

(xiv) Halofuginone in accordance with § 558.265.

* * * * *

Dated March 13, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-6532 Filed 3-20-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Table of Exempt Prescription Products

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Interim rule and request for comments.

SUMMARY: This interim final rule updates the Table of Exempt Prescription Products found in section 1308.32 of the Code of Federal Regulations by adding those prescription products to the list that have been granted exempt status since April 1, 1988.

DATES: Effective April 1, 1989. Comments should be submitted on or before March 21, 1989.

ADDRESS: Comments should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act, as amended by the Dangerous Drug Diversion Control Act of 1984, authorizes the Attorney General at 21 U.S.C. 811(g)(3)(A) to exempt, from specific provisions of the Act, a preparation or mixture if that preparation or mixture: (1) contains a nonnarcotic controlled substance; (2) is approved for prescription use; and (3) meets certain criteria. An exemption may be granted if the nonnarcotic controlled substance is combined with one or more active medicinal ingredients which are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to the Drug Enforcement Administration per 21 CFR 1308.31. The current Table of Exempt Prescription Products found in 21 CFR Part 1308 lists those products that have been granted exempt status as of April 1, 1988 (53 FR 10861).

The Deputy Assistant Administrator of the Office of Diversion Control hereby certifies that these matters will have no significant negative impact upon small businesses or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The addition of products to the list of exempt prescription products has the effect of exempting them from certain measures of control imposed by the Controlled Substances Act of 1970 and its implementing regulations.

The Office of Management and Budget (OMB) has previously determined that these changes are internal agency matters which do not require formal OMB review. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(g)(3)(A) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator of the Office of Diversion Control hereby amends 21 CFR Part 1308 as set forth below.

Date: March 13, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.32 the list of products found in the Table of Exempt Prescription Products is revised to read as follows:

§ 1308.32 Exempted Prescription Products

* * * * *

TABLE OF EXEMPT PRESCRIPTION PRODUCTS

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Adria Laboratories	Axotal	00013-1301	TB	Butalbital	50.00
Alpha Scriptics Inc	Butacet Capsules	53121-0133	CA	Butalbital	50.00
American Urologicals Inc	Butace	00539-0906	CA	Butalbital	50.00
Apotheca	Theophen	12634-0101	TB	Phenobarbital	8.00
Arco Pharmaceuticals	Arco-Lase Plus	00275-0045	TB	Phenobarbital	8.00
Arlo Interamerican	Espasmotex	11475-0835	TB	Phenobarbital	20.00
Ascher and Co	Anaspaz PB	00225-0300	TB	Phenobarbital	15.00
Ascot Pharmaceuticals	Antispasmodic Tablets	47679-0158	TB	Phenobarbital	16.20
Ascot Pharmaceuticals	Chlordiazepoxide Hydrochloride+Clidinium Bromide.	47679-0268	CA	Chlordiazepoxide HCl	5.00
Ayerst Laboratories	PMB-200	00046-0880	TB	Meprobamate	200.00
Ayerst Laboratories	PMB-400	00046-0881	TB	Meprobamate	400.00
Barre Drug Co	Barophen	00472-0981	EL	Phenobarbital	3.24
Barre Drug Co	Isolate Compound	00472-0929	EL	Phenobarbital	0.40
Baucum Laboratories Inc	Butalbital, Acetaminophen and Caffeine Tablets.	54696-0513	TB	Butalbital	50.00
Beecham Laboratories	Hybephen	00029-2360	TB	Phenobarbital	15.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Bioline Labs Inc	Anti-Spas Elixir	00719-4090	EL	Phenobarbital	3.24
Bioline Labs Inc	Anti-Spas Tablets	00719-1091	TB	Phenobarbital	16.20
Bioline Labs Inc	Chlordinium	00719-1208	CA	Chlordiazepoxide HCl	5.00
Blaine Co	Spaslin	00165-0029	TB	Phenobarbital	16.20
Blansett Pharm Co	Anolor 300 Capsules	51674-0009	CA	Butalbital	50.00
Bock Pharmacal Co	Broncholate	00563-0277	CA	Phenobarbital	8.00
Bowman Pharmaceutical	Private Formula No 3095	00252-3095	TB	Phenobarbital Sodium	15.00
Breon Labs	Isuprel Compound	00057-0874	EL	Phenobarbital	0.40
Caldwell & Bloor Co	Hyosital White	00361-2131	TB	Phenobarbital	16.20
Carnrick Labs Inc	Phrenilin	00086-0050	TB	Butalbital	50.00
Carnrick Labs Inc	Phrenilin Forte	00086-0056	CA	Butalbital	50.00
Chelsea Laboratories	Chlordiazepoxide with Clidinium Bromide	46193-0948	CA	Chlordiazepoxide HCl	5.00
Columbia Drug Co	Isopap Capsules	11735-0400	CA	Butalbital	50.00
Consolidated Midland	Bellalphen	00223-0425	TB	Phenobarbital	16.20
Dorasol Laboratories	Donalixir	00471-0095	EL	Phenobarbital	3.24
Dunhall Pharmacal Inc	Triaprin	00217-2811	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Capsules	00642-0163	CA	Butalbital	50.00
Everett Laboratories Inc	Repan Tablets	00642-0162	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 325 mg/Butalbital 50 mg	00456-0674	TB	Butalbital	50.00
Forest Pharmacal Inc	Acetaminophen 500mg/Butalbital 50mg	00456-0671	TB	Butalbital	50.00
Forest Pharmacal Inc	Bancap	00456-0546	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Capsules	00456-0631	CA	Butalbital	50.00
Forest Pharmacal Inc	Esgic Forte Tablets	00456-0673	TB	Butalbital	50.00
Forest Pharmacal Inc	Esgic Tablets	00456-0630	TB	Butalbital	50.00
Forest Pharmacal Inc	G.B.S.	00456-0281	TB	Phenobarbital	8.00
Forest Pharmacal Inc	Soniphen	00456-0429	ET	Phenobarbital	16.00
Gen-King Products	Antispasmodic	03547-0777	TB	Phenobarbital	16.20
Genetco Inc	Butalbital, Acetaminophen and Caffeine Tablets.	00302-0490	TB	Butalbital	50.00
Geriatric Pharmacal Corp	Bilezyme Plus	00249-1112	TB	Phenobarbital	8.00
Geriatric Pharmacal Corp	Gustase Plus	00249-1121	TB	Phenobarbital	8.00
Glenlawn Laboratories	Chlordinium Sealets	00580-0084	CA	Chlordiazepoxide HCl	5.00
Goldline Laboratories	Antispasmodic Elixir	00182-0686	EL	Phenobarbital	3.24
Goldline Laboratories	Antispasmodic Tablets	00182-0129	TB	Phenobarbital	16.20
Goldline Laboratories	Bel-phen-ergot s Tablets	00182-1847	TB	Phenobarbital	40.00
Goldline Laboratories	Butalbital, APAP and Caffeine Tablets	00182-1274	TB	Butalbital	50.00
Goldline Laboratories	C.D.P. Plus Capsules	00182-1856	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Blue Cross Butalbital, APAP and Caffeine Tablets.	00879-0567	TB	Butalbital	50.00
Halsey Drug Co Inc	Butalbital and Acetaminophen Tablets	00879-0543	TB	Butalbital	50.00
Halsey Drug Co Inc	Clinoxide	00879-0501	CA	Chlordiazepoxide HCl	5.00
Halsey Drug Co Inc	Susano	00879-0059	EL	Phenobarbital	3.24
Halsey Drug Co Inc	Susano	00879-0058	TB	Phenobarbital	16.20
Horizon Products Co	Spastrin Tablets	54580-0124	TB	Phenobarbital	40.00
Hyrex Pharmaceutical	Panzyme	00314-0310	TB	Phenobarbital	8.10
Hyrex Pharmaceutical	Two-Dyne Revised	00314-2229	TB	Butalbital	50.00
Interstate Drug Exchange	IDE-Cet Tablets	00814-3820	TB	Butalbital	50.00
Interstate Drug Exchange	Spastolate	00814-7088	TB	Phenobarbital	16.20
Intetlab	CON-TEN	11584-1029	CA	Butalbital	50.00
Kaiser Foundation Hosp	Belladonna Alkaloids with Phenobarbital	00179-0045	EL	Phenobarbital	3.24
Keene Pharmacal Inc	Endolar	00588-7777	CA	Butalbital	50.00
Knoll Pharmaceutical	Quadrinal Suspension	00044-4580	SS	Phenobarbital	2.40
Knoll Pharmaceutical	Quadrinal Tablets	00044-4520	TB	Phenobarbital	24.00
Kraft Pharmacal Co Inc	Digestokraft	00796-0237	TB	Butabarbital Sodium	8.00
Kremers Urban Co	Levsin with Phenobarbital Elixir	00091-4530	EL	Phenobarbital	3.00
Kremers Urban Co	Levsin with Phenobarbital Tablets	00091-3534	TB	Phenobarbital	15.00
Kremers Urban Co	Levsin-PB	00091-4536	DP	Phenobarbital	15.00
Kremers Urban Co	Levsinex with Phenobarbital	00091-3539	XC	Phenobarbital	45.00
Landry Pharmacal Inc	Febridyne Plain Capsules	05383-0001	CA	Butalbital	50.00
Lanpar Co	PB Phe-Bell	12908-7006	TB	Phenobarbital	16.20
Lasalle Laboratories	Pacaps Modified Formula	48534-0884	CA	Butalbital	50.00
Lemmon Pharmacal Co	Donphen	00093-0205	TB	Phenobarbital	15.00
Life Laboratories	Belladonna Alkaloids with Phenobarbital	00737-1283	EL	Phenobarbital	3.00
Lunsco Inc	Pacaps Capsules	10892-0116	CA	Butalbital	50.00
Major Pharmaceuticals	Fabophen Tablets	00904-3280	TB	Butalbital	50.00
Mallard Inc	Anoquan Modified Formula	00166-0881	CA	Butalbital	50.00
Mallard Inc	Malatal	00166-0748	TB	Phenobarbital	16.20
Marlop Pharmacal Inc	Broncomar	12939-0128	EL	Butabarbital	1.00
Marlop Pharmacal Inc	Dolmar	12939-0812	CA	Butalbital	50.00
Marnel Pharmacal Inc	Margesic Capsules	00682-0804	CA	Butalbital	50.00
Mayrand Pharmacal Inc	B-A-C Tablets	00259-1256	TB	Butalbital	50.00
Mayrand Pharmacal Inc	Sedapap-10 Tablets	00259-1278	TB	Butalbital	50.00
Mead Johnson Pharmacal	Quibron Plus Capsules	00087-0518	CA	Butabarbital	20.00
Mead Johnson Pharmacal	Quibron Plus Elixir	00087-0511	EL	Butabarbital	1.33
Medco Supply Co	Phenobarbital & Hyoscyamine Sulfate	00764-2057	TB	Phenobarbital	16.20
Mikart Inc	Butalbital and Acetaminophen Tablets 50/325	46672-0099	TB	Butalbital	50.00
Mikart Inc	Butalbital and Acetaminophen Tablets 50/650	46672-0098	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen and Caffeine Capsules.	46672-0228	CA	Butalbital	50.00

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Mikart Inc	Butalbital, Acetaminophen and Caffeine Tablets.	46672-0053	TB	Butalbital	50.00
Mikart Inc	Butalbital, Acetaminophen, and Caffeine Tablets II.	46672-0059	TB	Butalbital	50.00
Moore Drug Exchange	Antispasmodic Tablets	00839-5055	TB	Phenobarbital	16.00
Moore Drug Exchange	Theophenyllin	00839-5111	TB	Phenobarbital	8.00
Nejo Pharmaceutical	Spasmalones	00653-0002	TB	Phenobarbital	16.00
Parke-Davis & Co	Dilantin with Phenobarbital ½	00071-0531	CA	Phenobarbital	32.00
Parke-Davis & Co	Dilantin with Phenobarbital ¼	00071-0375	CA	Phenobarbital	16.00
Parke-Davis & Co	Tedral SA	00071-0231	XT	Phenobarbital	25.00
Parmed Pharmaceutical	Sedapar Elixir	00349-4100	EL	Phenobarbital	3.24
Parmed Pharmaceutical	Sedapar Tablets	00349-2355	TB	Phenobarbital	16.20
Pasadena Research	Seds	00418-4072	TB	Phenobarbital	16.20
Pharmaceutical Basics Inc	Clinibrax Capsules	00832-1054	CA	Chlordiazepoxide HCl	5.00
Poythress & Co Inc	Antrocol	00095-0041	CA	Phenobarbital	16.00
Poythress & Co Inc	Antrocol Elixir	00095-0042	EL	Phenobarbital	3.00
Poythress & Co Inc	Antrocol Tablets	00095-0040	TB	Phenobarbital	16.00
Poythress & Co Inc	Mudrane	00095-0050	TB	Phenobarbital	8.00
Poythress & Co Inc	Mudrane GG Elixir	00095-0053	EL	Phenobarbital	0.50
Poythress & Co Inc	Mudrane GG Tablets	00095-0051	TB	Phenobarbital	8.00
Private Formula Inc	Sangesic	00511-1627	TB	Butalbital	30.00
Qualitest Products Inc	Butalbital, Acetaminophen and Caffeine Tablets.	52446-0544	TB	Butalbital	50.00
Qualitest Products Inc	Chlordiazepoxide HCl 5 mg and Clidinium Br 2.5 mg.	52446-0096	CA	Chlordiazepoxide HCl	5.00
Redi-Med	Butalbital Compound Capsules	53506-0103	CA	Butalbital	50.00
Richlyn Laboratories	Aminophylline & Phenobarbital	00115-2156	ET	Phenobarbital	15.00
Richlyn Laboratories	Aminophylline & Phenobarbital Tablets	00115-2154	TB	Phenobarbital	15.00
Richlyn Laboratories	Bellophen	00115-2400	TB	Phenobarbital	16.20
Richlyn Laboratories	Spasmolin	00115-4652	TB	Phenobarbital	15.00
Robins A H Co Inc	Donnatal Capsules	00031-4207	CA	Phenobarbital	16.20
Robins A H Co Inc	Donnatal Elixir	00031-4221	EL	Phenobarbital	3.24
Robins A H Co Inc	Donnatal Extentabs	00031-4235	XT	Phenobarbital	48.60
Robins A H Co Inc	Donnatal No 2	00031-4264	TB	Phenobarbital	32.40
Robins A H Co Inc	Donnatal Tablets	00031-4250	TB	Phenobarbital	16.20
Robins A H Co Inc	Donnazyme	00031-4649	ET	Phenobarbital	8.10
Roche Labs	Librax	00140-0007	CA	Chlordiazepoxide HCl	5.00
Roche Labs	Menrium 10-4	00140-0025	TB	Chlordiazepoxide	10.00
Roche Labs	Menrium 5-2	00140-0023	TB	Chlordiazepoxide	5.00
Roche Labs	Menrium 5-4	00140-0024	TB	Chlordiazepoxide	5.00
Rondex Laboratories	Antispasmodic	00367-4118	TB	Phenobarbital	16.20
Rotex Pharmacal Inc	Rogesic Capsules	31190-0008	CA	Butalbital	50.00
Ruckstuhl Co	Sedarex No 3	00144-1575	TB	Phenobarbital	16.20
Rugby Laboratories	Clindex	00536-3490	CA	Chlordiazepoxide HCl	5.00
Rugby Laboratories	Hyosophen Capsules	00536-3926	CA	Phenobarbital	16.00
Rugby Laboratories	Hyosophen Tablets	00536-3920	TB	Phenobarbital	16.20
Rugby Laboratories	ISOCET Tablets	00536-3951	TB	Butalbital	50.00
Rugby Laboratories	Theodrine Tablets	00536-4648	TB	Phenobarbital	8.00
Russ Pharmacal Inc	FEMCET Capsules	50474-0703	CA	Butalbital	50.00
Sandoz Pharmacal Corp	Belladenal	00078-0028	TB	Phenobarbital	50.00
Sandoz Pharmacal Corp	Belladenal-S	00078-0027	XT	Phenobarbital	50.00
Sandoz Pharmacal Corp	Bellergal-S	00078-0031	XT	Phenobarbital	40.00
Sandoz Pharmacal Corp	Cafergot P-B Suppository	00078-0035	SU	Pentobarbital	60.00
Sandoz Pharmacal Corp	Cafergot P-B Tablets	00078-0036	TB	Pentobarbital Sodium	30.00
Sandoz Pharmacal Corp	Fioricet	00078-0084	CA	Butalbital	50.00
Schein Henry Inc	Antispasmodic	00364-0020	TB	Phenobarbital	16.00
Schein Henry Inc	Antispasmodic Elixir	00364-7002	EL	Phenobarbital	3.20
Schein Henry Inc	Isolate Compound Elixir	00364-7029	EL	Phenobarbital	0.40
Schein Henry Inc	T-E-P	00364-0266	TB	Phenobarbital	8.10
Shoals Pharmacal Co	Tencet	47649-0370	TB	Butalbital	50.00
Shoals Pharmacal Co	Tencet Capsules	47649-0560	CA	Butalbital	50.00
Stewart-Jackson Pharmacal	Ezol	45985-0578	CA	Butalbital	50.00
Stuart Pharmaceutical	Kinesed	00038-0220	TB	Phenobarbital	16.00
Towne Paulsen & Co	T. E. P.	00157-0980	TB	Phenobarbital	8.00
Trimen Labs	Amaphen Capsules (reformulated)	11311-0954	CA	Butalbital	50.00
Truxton C O Inc	Atropine Sulfate with Phenobarbital	00463-6035	TB	Phenobarbital	15.00
Truxton C O Inc	Ephedrine with Phenobarbital	00463-6086	TB	Phenobarbital	15.00
Truxton C O Inc	Spastemms Elixir	00463-9023	EL	Phenobarbital	3.24
Truxton C O Inc	Spastemms Tablets	00463-6181	TB	Phenobarbital	15.00
U.S. Pharmaceuticals Inc	Medigesic Tablets	52747-0311	TB	Butalbital	50.00
UAD Laboratories Inc	Bucet Capsules	00785-2307	CA	Butalbital	50.00
UAD Laboratories Inc	Bucet Tablets	00785-2307	TB	Butalbital	50.00
UAD Laboratories Inc	Triad	00785-2306	TB	Butalbital	50.00
UAD Laboratories Inc	Triad Capsules	00785-2305	CA	Butalbital	50.00
UDL Laboratories	Belladonna Alkaloids with Phenobarbital	51079-0168	TB	Phenobarbital	16.20
University of Iowa	Bladder Mixture Plus Phenobarbital	11326-1624	LQ	Phenobarbital	2.92
Vale Chemical Co	Alkaloids of Belladonna and Phenobarbital	00377-0527	TB	Phenobarbital	16.20
Vale Chemical Co	Antispas	00377-0622	TB	Phenobarbital	16.20
Vale Chemical Co	Barbeloid (Revised) Green	00377-0365	TB	Phenobarbital	16.20

TABLE OF EXEMPT PRESCRIPTION PRODUCTS—Continued

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
Vale Chemical Co	Barbeloid Yellow	00377-0498	TB	Phenobarbital	16.20
Vale Chemical Co	Charspast	00377-0500	TB	Phenobarbital	16.20
Vale Chemical Co	Digestokraft	00377-0460	TB	Butabarbital Sodium	8.00
Vale Chemical Co	Ephedrine & Sodium Phenobarbital	00377-0109	TB	Phenobarbital Sodium	16.20
Vale Chemical Co	Panzyme	00377-0491	TB	Phenobarbital	8.10
Vale Chemical Co	Pulsaphen	00377-0652	TB	Phenobarbital	15.00
Vale Chemical Co	Truxaphen	00377-0541	TB	Phenobarbital	16.20
Vale Chemical Co	Wescophen S-II	00377-0628	TB	Phenobarbital	30.00
Vale Chemical Co	Wesmatic Forte	00377-0426	TB	Phenobarbital	8.10
Vortech Pharmacal Co	Donna-Sed	00298-5054	EL	Phenobarbital	3.24
Vortech Pharmacal Co	Hypnaldyne	00298-1778	TB	Phenobarbital	16.20
Vortech Pharmacal Co	Isophed	00298-5680	LQ	Phenobarbital	0.40
Vortech Pharmacal Co	Phedral C. T.	00298-1173	TB	Phenobarbital	8.10
W.E. Hauck Inc	G-1 Capsules	43797-0244	CA	Butalbital	50.00
Wallace Laboratories	Barbidonna Elixir	00037-0305	EL	Phenobarbital	3.20
Wallace Laboratories	Barbidonna No 2	00037-0311	TB	Phenobarbital	32.00
Wallace Laboratories	Barbidonna Tablets	00037-0301	TB	Phenobarbital	16.00
Wallace Laboratories	Butibel Elixir	00037-0044	EL	Butabarbital Sodium	3.00
Wallace Laboratories	Butibel Tablets	00037-0046	TB	Butabarbital Sodium	15.00
Wallace Laboratories	Lufyllin-EPG Elixir	00037-0565	EL	Phenobarbital	1.60
Wallace Laboratories	Lufyllin-EPG Tablets	00037-0561	TB	Phenobarbital	16.00
Wallace Laboratories	Milprem-200	00037-5501	TB	Meprobamate	200.00
Wallace Laboratories	Milprem-400	00037-5401	TB	Meprobamate	400.00
Wesley Pharmacal Co	Hytrophen	00917-0244	TB	Phenobarbital	16.20
Wesley Pharmacal Co	Pulsaphen Gray	00917-0113	TB	Phenobarbital	15.00
Wesley Pharmacal Co	Wescophen-S	00917-0135	TB	Phenobarbital	30.00
Wesley Pharmacal Co	Wesmatic Forte	00917-0845	TB	Phenobarbital	8.00
West-ward Inc	Belladonna Alkaloids & Phenobarbital	00143-1140	TB	Phenobarbital	16.20
West-ward Inc	Butalbital with Acetaminophen and Caffeine Tablets.	00143-1787	TB	Butalbital	50.00
West-ward Inc	Theophylline Ephedrine & Phenobarbital	00143-1695	TB	Phenobarbital	8.00
Winthrop Labs	Isuprel	00024-0874	EL	Phenobarbital	0.40
Zenith Labs Inc	Azpan	00172-3747	TB	Phenobarbital	8.00

[FR Doc. 89-6328 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8241]

Extension of Time To File for Taxpayers Outside the United States and Puerto Rico

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary Regulations.

SUMMARY: This document contains a correction to Treasury Decision 8241, which was published in the **Federal Register** for Thursday, February 23, 1989 (54 FR 7762). The temporary regulations relate to the extension of time to file Federal income tax returns and pay any taxes owing for United States citizens and U.S. residents who are outside of the United States and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Peter J. Hanley, (202) 566-3499 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction provide the public with immediate guidance regarding the circumstances under which the Internal Revenue Service will grant an extension of time to file federal income tax returns due after April 15, 1988, and pay any taxes owing thereon, under § 1.6081-2 of the regulations.

These temporary regulations reflect changes to the current regulations provided by Notice 88-40 (issued by the IRS Public Affairs Office and not published in the **Federal Register**) and clarify existing rules.

Need for Correction

As published, T.D. 8241 contains a typographical error that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8241) which was the subject of FR Doc. 89-4047, is corrected as follows:

1. On page 776, in the preamble, column 2, line 3, under the heading of Effective Date, the language "returns due after April 15, 1988." is removed and the language "returns due on or after April 15, 1988." is added in its place.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 89-6605 Filed 3-20-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1331-89]

Amendment of Organization and Functions

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends 28 CFR Part 0 to amend the Department's organizational statement at 28 CFR 0.14. This order will revise the Code of Federal Regulations so that it accurately reflects the current rules of the Department.

EFFECTIVE DATE: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: John C. Keeney, Deputy Assistant Attorney General, Criminal Division;

telephone number: (202) 633–2621. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This regulation will amend title 28 of the Code of Federal Regulations in order to revise 0.14. Section 0.14 was intended as an effort to provide evenhanded treatment for Members of Congress and therefore largely paralleled the language of the statute establishing the independent counsel. 28 U.S.C. 591–599. This amendment will remedy the omission of one provision that is in the statute but not presently in the regulations: the provision which allows for the extension of the period for the preliminary investigation. 28 U.S.C. 592(a)(3).

This is not a major rule within the meaning of EO. No. 12291. This will not have an impact on a signficant number of small businesses. 5 U.S.C. 901.

List of Subject Matters in 28 CFR Part 0

Authority delegations (Government agencies).

By the authority vested in me including 28 U.S.C. 509, 510, and 5 U.S.C. 301, Subpart B of Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.14 is amended by adding a new paragraph (k) to read as follows:

§ 0.14 [Amended]

* * * * *

(k) The Attorney General may, upon the recommendation of the Assistant Attorney General for the Criminal Division, grant a single extension, for a period of not more than 60 days, of the 90-day period referred to in paragraph (b) above.

Dated: March 14, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89–6433 Filed 3–20–89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 362

[DoD Directive 5105.19]

Defense Communications Agency

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document amends 32 CFR Part 362 concerning the Defense Communications Agency to correct administrative errors in the footnotes.

EFFECTIVE DATE: December 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Director for Administration and Management (Organizational and Management Planning), the Pentagon, Washington, DC, telephone 202–697–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 362

Organization and functions (Government agencies).

PART 362—DEFENSE COMMUNICATIONS AGENCY (DCA)

Accordingly, 32 CFR Part 362 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 10 U.S.C. 191–193.

2. Footnote 1 is amended by changing "Attn: Code 1062" to "Attn: Code 1053,".

3. Footnotes 3 and 8 are amended by changing "Section 362.5(a)(1)" to "Section 362.5(a)(2)".

4. Footnotes 4 through 6 are added to read as follows: "See footnote 1 to § 362.5(a)(2)".

5. Footnote 7 is added to read as follows: "See footnote 2 to § 362.5(a)(2)".

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 15, 1989.

[FR Doc. 89–6442 Filed 3–20–89; 8:45 am]

BILLING CODE 3810-01-M

POSTAL RATE COMMISSION

39 CFR Part 3001

Publication of Domestic Mail Classification Schedule; Order of Rulemaking; Fourth-Class Mail

CFR Correction

In Title 39 of the Code of Federal Regulations, revised as of July 1, 1988, in Appendix A to Subpart C of Part 3001, under the heading "CLASSIFICATION SCHEDULE 400-FOURTH-CLASS MAIL" appearing on page 359 an error appeared.

PART 3001—[CORRECTED]

Appendix A to Subpart C—[Corrected]

On page 359, in the second column, under *400.0202 Bulk*, in the fourth line "200 pounds" should read "2000 pounds".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3536-6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Continuous Emission Monitoring Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision satisfies the requirement that a SIP contain provisions which require certain existing subject stationary sources to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions. The intended effect of this action is to approve the State's request to amend its SIP to incorporate continuous emission monitoring (CEM) requirements. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATES: This action will become effective on May 22, 1989 unless notice is given by April 20, 1989 that someone wishes to submit adverse or critical comments.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; and the Department of Environmental Protection, Bureau of Air Quality Control, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565–3246; FTS 835–3246.

SUPPLEMENTARY INFORMATION: On August 22, 1988, the Maine Department of Environmental Protection (DEP) submitted revisions to its SIP. These revisions include revised new source review (NSR) regulations, revised stack height and dispersion technique regulations, visibility protection provisions for mandatory Class I Federal areas and associated integral vistas, revised particulate matter (PM_{10}) national ambient air quality standards (NAAQS) requirements, and a CEM regulation. This rulemaking approves Maine's CEM regulation. EPA will take action on the other revisions in a separate rulemaking notice.

Pursuant to 40 CFR 51.214 and 40 CFR Part 51, Appendix P, the Maine DEP submitted a regulation entitled, "Source Surveillance," Chapter 117. The regulation requires existing subject stationary sources to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions, and to provide other information as specified in 40 CFR Part 51, Appendix P. This regulation applies to existing fossil-fuel fired steam generators and sulfuric acid plants which are not subject to New Source Performance Standards (NSPS) under 40 CFR Part 60.

The CEM provisions of 40 CFR Part 51.214 and Part 51, Appendix P apply to non-NSPS subject fossil-fuel fired steam generators, sulfuric acid plants, nitric acid plants, and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Maine's regulation is limited to only fossil-fuel fired steam generators and sulfuric acid plants because there are no nitric acid plants or fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries located in the State of Maine. The DEP has certified that there are no sources of this type in the State of Maine.

Final Action

EPA is approving Chapter 117, "Source Surveillance," as a revision to the Maine SIP. This regulation requires existing subject sources to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions.

EPA is approving this SIP revision 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 this **Federal Register** 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 May 22, 1989.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Incorporation by reference.

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

Date: March 7, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

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

PART 52—[AMENDED]

Subpart U—Maine

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

Authority: 42 U.S.C. 7401–7642.

§ 52.1020 [Amended]

2. Section 52.1020 is amended by adding paragraph (c)(24) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(24) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 22, 1988.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated August 19, 1988 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 117 of the Maine Department of Environmental Protection Air Regulations entitled, "Source Surveillance," effective in the State of Maine on August 9, 1988.

(ii) Additional materials.

(A) Nonregulatory portions of the state submittal.

3. In § 52.1031, Table 52.1031 is amended by adding the following lines after Chapter 114 at the end of the table.

§ 52.1031 EPA—Approved Maine regulations.

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EAP	Federal Register citation	52.1020
*	*	*	*	*	*
117	Source Surveillance	08/09/88	[Date of publication]	[*FR* citation from published date].	24
*	*	*	*	*	*

[FR Doc. 89–5975 Filed 3–20–89; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL-3540-4]

Designation of Areas for Air Quality Planning Purposes; OH

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

ACTION: Notice of final rulemaking.

SUMMARY: This notice disapproves the State of Ohio's June 15, 1987, request to redesignate the air quality status of 31 counties for total suspended particulates (TSP). USEPA had determined that the redesignation request was incomplete for these counties because of a lack of sufficient technical support.

DATE: This final rulemaking becomes effective April 20, 1989.

ADDRESSES: Copies of the redesignation request and supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 WaterMark Drive, P.O. Box 1049, Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 added section 107(d) to the Clean Air Act (the Act). This section directed each State to submit, to the Administrator of USEPA, a list of the attainment status of all areas within the State. The Administrator was required to promulgate the State lists, modified as necessary. He did so on March 3, 1978 (43 FR 8962), and made necessary amendments on October 5, 1978 (43 FR 45993). These area designations are subject to revision whenever sufficient data become available to warrant a redesignation.

One pollutant for which USEPA published area designations was TSP. The TSP designations were based upon violations of the NAAQS developed for TSP by USEPA. The primary TSP NAAQS were violated when, in a year, either: (1) the geometric mean value of TSP concentrations exceeded 75 micrograms per cubic meter of air ($\mu g/m^3$) (the annual primary standard); or (2) the 24-hour concentration of TSP exceeded 260 $\mu g/m^3$ more than once (the 24-hour primary standard). The secondary TSP NAAQS was violated when, in a year, the 24-hour concentration exceeded 150 $\mu g/m^3$ more than once.

USEPA revised the particulate matter standard on July 1, 1987 (52 FR 24634), and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). However, USEPA will continue to process redesignations of areas from nonattainment to attainment or unclassifiable for TSP in keeping with past policy because various regulatory provisions such as new source review and prevention of significant deterioration (PSD) are keyed to the attainment status of areas. The July 1, 1987, notice (p. 24682, column 1) further described USEPA's transition policy regarding TSP redesignations.

USEPA's criteria for supportable redesignation requests, as they pertain to TSP, are discussed most recently in the following memorandum:

- September 30, 1985, from Gerald Emison, Director, Office of Air Quality Planning and Standards (OAQPS), to the Regional Air Division Directors entitled "Total Suspended Particulate (TSP) Redesignations."

At the present time there are 31 counties in Ohio that are designated either partial or full county nonattainment of one or both of the TSP NAAQS (40 CFR 81.336). On June 15, 1987, the State of Ohio submitted a request to revise the TSP attainment status designations for the 31 counties to attainment/unclassifiable. Following is a listing of the 31 counties and a summary of their nonattainment status.

County	Summary of nonattainment status
Belmont	Portions of the county—primary and secondary nonattainment.
Butler	City of Middletown—secondary nonattainment.
Clark	Portion of the county—secondary nonattainment.
Columbiana	Portions of the county—primary and secondary nonattainment.
Cuyahoga	Portions of the county—primary and secondary nonattainment.
Franklin	Portions of the county—primary and secondary nonattainment.
Gallia	Entire county—secondary nonattainment.
Hamilton	Portion of the county—primary nonattainment.
Jackson	Entire county—secondary nonattainment.
Jefferson	Portions of the county—primary and secondary nonattainment.
Lake	Portions of the county—primary and secondary nonattainment.
Lawrence	Cities of Ironton and Coal Grove and Upper and Perry Townships—secondary nonattainment.
Logan	Entire county—primary nonattainment.
Lorain	Portions of the county—primary and secondary nonattainment.
Lucas	Cities of Toledo and Oregon—secondary nonattainment.
Mahoning	Portions of the county—primary and secondary nonattainment.
Medina	Entire county—secondary nonattainment.
Miami	Portions of the county—primary and secondary nonattainment.
Monroe	Portions of the county—primary and secondary nonattainment.
Montgomery	Portions of the county—primary and secondary nonattainment.
Muskingum	Entire county—primary nonattainment.
Richland	Entire county—primary nonattainment.
Sandusky	Entire county—primary nonattainment.
Scioto	Portions of the county—primary and secondary nonattainment.
Seneca	City of Bettsville and Liberty Township north of the Penn Central Railroad—secondary nonattainment.
Stark	Portions of the county—primary and secondary nonattainment.
Summit	Portions of the county—primary and secondary nonattainment.
Trumbull	Portions of the county—primary and secondary nonattainment.
Tuscarawas	Entire county—secondary nonattainment.
Washington	Entire county—secondary nonattainment.
Wyandot	Entire county—secondary nonattainment.

For a detailed description of the specific portions of the counties that are classified nonattainment, we refer you to the Ohio TSP listing contained in 40 CFR 81.336.

To support their June 15, 1987, request that the primary and secondary nonattainment areas in the above 31 counties be redesignated to attainment/unclassifiable, the State is citing USEPA's July 1, 1987, promulgation of the PM_{10} standard. Specifically, it is Ohio's position that "upon promulgation of the PM_{10} standard, the TSP NAAQS ceased to exist. Since there are no TSP standards, there cannot be nonattainment areas for TSP, and the corresponding nonattainment designations are also no longer appropriate." No further technical support was provided.

USEPA reviewed the State's request and determined that the redesignation request was incomplete for these counties because of a lack of sufficient technical support. Therefore, because the request was incomplete, USEPA on October 31, 1988 (53 FR 43905), proposed to disapprove the request to redesignate the air quality status of the 31 counties.

Interested parties were given until November 30, 1988, to submit comments on the October 31, 1988, proposed

disapproval. A public comment was received from a law firm representing New Boston Coke Corporation and Armco Inc. USEPA will respond to that comment at the present time.

Comment: New Boston Coke and Armco believe the request for redesignation submitted by the State of Ohio should be approved. Even though they indicate the request should be approved, they feel it would be more appropriate and consistent with the Clean Air Act to simply delete these TSP designations from 40 CFR Part 81 altogether. New Boston Coke and Armco are aware of USEPA's transition policy regarding TSP redesignations as announced on July 1, 1987 (52 FR 24633).

Response: USEPA reiterates the position found in the October 31, 1988, notice of proposed rulemaking and the July 1, 1987, notice that TSP remains regulated under the Clean Air Act. TSP remains regulated even though a NAAQS for TSP no longer exists because the statutory prevention of significant deterioration (PSD) increments for particulate matter are still expressed in terms of TSP. Thus, for TSP, the prevention of significant deterioration requirements will continue to apply in any area which does not have a section 107 nonattainment designation for TSP (52 FR 24683, col. 3). Since New Boston Coke and Armco are aware of USEPA's policies as stated in the July 1, 1987, **Federal Register** notice, USEPA does not believe it is necesary to discuss them further at this time.

Final Action: Disapproval. The State of Ohio's redesignation request for the 31 counties is not approvable because the State did not provide the necessary technical support data. Thus, the designation for these 31 counties will remain the same as contained in 40 CFR Part 81. USEPA notes that if the State submits acceptable technical support data for any of these counties, USEPA will redesignate those counties.

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 May 22, 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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 13, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-6548 Filed 3-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6827]

List of Communities Eligible for the Sale of Flood Insurance; Virginia et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Food insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry read as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Virginia: Chincoteague, town of, Accomack County	510002	Mar. 4, 1974, Emerg.; Mar. 1, 1977, Reg.; Mar. 1, 1977, Susp.; Feb. 2, 1989, Rein.	Mar. 1, 1977.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Michigan:			
Coldwater, city of, Branch County	260813-New	Feb. 10, 1989, Emerg.	Do.
Cascade charter township of, Kent County	260814	Feb. 15, 1989, Emerg.	Do.
Tennessee: Warren County, unincorporated areas	470363	June 6, 1983, Emerg.; Mar. 16, 1988, Reg.; Mar. 16, 1988, Susp.; Feb. 7, 1989, Rein.	Mar 16, 1988.
Florida: Layton, city of, Monroe County	120169	July 23, 1971, Emerg.; July 23, 1971, Reg.; Sept. 30, 1988, Susp.; Feb. 17, 1989, Rein.	July 23, 1971
Pennsylvania:			
Washington, township of, Armstrong County	421317	Feb. 17, 1977, Emerg.; Feb. 4, 1988, Reg.; Feb. 4, 1988, Susp.; Feb. 8, 1989, Rein.	Feb. 4, 1988.
Gilpin, township of, Armstrong County	421306	July 25, 1975, Emerg.; May 4, 1988, Reg.; May 4, 1988, Susp.; Feb. 8, 1989, Rein.	May 4, 1988.
Kentucky:			
Whitley County, unincorporated areas	210226	July 9, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.; Feb. 9, 1989, Rein.	Jan. 5, 1989.
Williamsburg, city of, Whitley County	210228	July 9, 1975, Emerg.; Jan. 5, 1989, Reg.; Jan. 5, 1989, Susp.; Feb. 9, 1989, Rein.	Do.
California: Hercules, city of, Contra Costa County	060434	July 25, 1977, Emerg.; Sept. 30, 1982, Reg.; Aug. 16, 1988, Susp.; Feb. 9, 1989, Rein.	Sept. 30, 1982.
Texas: Fairfield, city of, Freestone County	480823	Feb. 8, 1989, Emerg.	Aug. 13, 1976.
Tennessee: Rives, city of, Obion County	470235	Oct. 26, 1984, Emerg., Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Feb. 22, 1989, Rein.	Sept. 1, 1987.
Pennsylvania: Tulpehocken, township of, Berks County	421115	Apr 19, 1978, Emerg.; Apr. 4, 1988, Reg.; Apr 4, 1988, Susp.; Feb. 21, 1989, Rein.	Aug. 4, 1988.
Texas: Piney Point Village, city of, Harris County	480308	July 1, 1974, Emerg.; Dec. 2, 1980, Reg.; Jan. 18, 1989, Susp.; Feb. 22, 1989, Rein.	Dec. 2, 1980.
Pennsylvania: Ruscombmanor, township of, Berks County	421099	Aug. 6, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp.; Feb. 20, 1989, Rein.	Feb. 2, 1989.
Indiana: Gentryville, town of, Spencer County	180394	July 3, 1975, Emerg.; Sept. 16, 1988, Reg.; Sept. 16, 1988, Susp.; Feb. 23, 1989, Rein.	Sept. 16, 1988.
Pennsylvania: Lackawaxen, township of, Pike County	421966	July 7, 1975, Emerg.; Sept. 2, 1988, Reg.; Sept. 2, 1988, Susp.; Feb. 24, 1989, Rein.	Sept. 2, 1988.
North Carolina: Clinton, city of, Sampson County	370263	July 2, 1975, Emerg.; July 2, 1975, Reg.; Sept. 30, 1988, Susp.; Feb. 24, 1989, Rein.	July 2, 1975.
Kentucky: Hardin County, unincorporated areas	210094	Feb. 1, 1979, Emerg.; Nov 4, 1988, Reg.; Nov. 4, 1988, Susp.; Feb. 16, 1989, Rein.	Nov. 4, 1988.
Texas:			
Teneha, city of, Shelby County	481006	Nov. 26, 1980, Emerg.; July 3, 1985, Reg.; Sept. 2, 1988, Susp.; Feb. 27, 1989, Rein.	July 3, 1985.
Wilmer, city of, Dallas County	480190	June 2, 1975, Emerg.; Sept. 17, 1980, Reg.; Jan. 18, 1989, Susp.; Feb. 27, 1989, Rein.	Sept. 17, 1980.
Tennessee: Dyersburg, city of, Dyer County	470047	May 2, 1975, Emerg.; Mar. 1, 1982, Reg.; Mar. 1, 1982, Susp.; Feb. 17, 1989, Rein.	Mar. 1, 1982.
Region III			
Pennsylvania:			
Deer Lake, borough of, Shuylkill County	422640	Feb. 2, 1989, suspension withdrawn	Feb. 2, 1989.
Penn Forest, township of, Carbon County	421457	do.	Do.
Westfall, township of, Pike County	421970	do.	Do.
Region IV			
Kentucky: Carrollton, city of, Carroll County	210232	do.	Do.
North Carolina: Cherokee County, unincorporated areas	370059	do.	Do.
Region V			
Indiana: Waterloo, town of, De Kalb County	180050	do.	Do.
Michigan: Victor, township of, Clinton County	260720	do.	Do.
Wisconsin: Grantsburg, village of, Burnett County	550033	do.	Do.
Region I			
Maine:			
Lovell, town of, Oxford County	230336	Feb. 17, 1989, suspension withdrawn	Feb. 17, 1989.
Wilton, town of, Franklin County	230063	do.	Do.
Region II			
New York: Duanesburg, town of, Schenectady County	361191	do.	Do.
Region III			
Pennsylvania:			
Brady, township of, Huntingdon County	421684	do.	Do.
Fallowfield, township of, Washington County	422148	do.	Do.
Franklin, township of, Huntingdon County	422573	do.	Do.
Greenwich, township of, Berks County	421067	do.	Do.
Lenhartsville, borough of, Berks County	420139	do.	Do.
Maryland: Sharptown, town of, Wicomico County	240081	do.	Sept. 27, 1985.
Region IV			
North Carolina:			
Lumberton, city of, Robeson County	370203	do.	Feb. 17, 1989.
Region V			
Michigan: Lockport, township of, St. Joseph County	260715	do.	Do.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Current effective map date
Ohio:			
Byesville, village of, Guernsey County	390199	...do...	Do.
Guernsey County, unincorporated areas	390198	...do...	Do.
Lore City, village of, Guernsey County	390202	...do...	Do.
Quaker City, village of, Guernsey County	390853	...do...	Do.
Cambridge, city of, Guernsey County	390200	...do...	Do.
Region X			
Oregon: Mosier, city of, Wasco County	410234	...do...	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: March 14, 1989.

[FR Doc. 89-6541 Filed 3-20-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 585, 587 and 588

[Docket No. 88-24]

Actions to Address Adverse Conditions Affecting U.S.-Flag Carriers that do not exist for Foreign Carriers in the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a Final Rule adding a new part to its regulations to implement the Foreign Shipping Practices Act of 1988. The new part sets forth general procedures for investigatory proceedings to address adverse foreign conditions affecting U.S.-flag carriers that do not exist for foreign carriers in the United States. The Commission is also amending its rules implementing section 19(1)(b) of the Merchant Marine Act, 1920 and section 13(b)(5) of the Shipping Act of 1984, to add new sanctions made available to the Commission in proceedings under those statutes, pursuant to the Foreign Shipping Practices Act.

DATES: Effective April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by issuing a Proposed Rule (53 FR 44039, November 1, 1988) to implement the Foreign Shipping Practices Act of 1988 ("1988 Act"). The 1988 Act is contained at Title X, Subtitle A of the Omnibus Trade and Competitiveness Act of 1988, which became effective on August 23, 1988. The 1988 Act directs the Commission to address adverse foreign conditions affecting United States carriers in U.S.-foreign oceanborne trades, which conditions do not exist for carriers of those countries in the United States, either under U.S. law or as a result of acts of U.S. carriers or others providing maritime or maritime-related services in the U.S. The 1988 Act prescribes an investigatory-type proceeding, an information-gathering mechanism, and actions, or sanctions, which the Commission is directed to take to offset any adverse conditions found to exist. The sanctions authorized for the administration of the 1988 Act are also made applicable by that statute to the administration and enforcement of section 13(b)(5) ("section 13(b)(5)") of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1712(b)(5), and section 19(1)(b) ("section 19") of the Merchant Marine Act, 1920 ("1920 Act"), 46 U.S.C. app. 876(1)(b). The Commission regulations implementing those provisions are codified at 46 CFR Parts 585 and 587.

The Proposed Rule largely tracked the language of the 1988 Act and paralleled the regulations implementing sections 19 and 13(b)(5). The more significant departures from the language of those regulations or the 1988 Act included: Language added to the definition of "U.S. carrier" to dichotomize more clearly the definitions of U.S. carrier and foreign carrier contained in the 1988 Act; a definition of the term "voyage" as used in the sanctions provision of the 1988 Act; a general, rather than a specific, requirement as to evidence and documentation supporting a petition for an investigation under the 1988 Act, in order to reflect the statute's allowance of "any person," not just an injured party, to file such a petition; provisions to allow persons submitting comments in the course of a 1988 Act proceeding to advise the Commission of their preferences and positions on the confidentiality of their submissions; and reorganization of the sanctions provisions in the sections 19 and 13(b)(5) regulations to better incorporate the additional sanctions authorized by the 1988 Act.

Comments on the Proposed Rule were received from ten parties: The United Shipowners of America ("USA");[1] Sea-Land Service, Inc. ("Sea-Land"); American President Lines, Ltd. ("APL");[2] Crowley Maritime Corporation ("Crowley");[2] Shippers for Competitive Ocean Transportation ("SCOT"); the Governments represented in the Consultation Shipping Group ("CSG");[3] the Council of European and Japanese National Shipowners' Associations ("CENSA"); the North Atlantic Ports Association ("NAPA"); the Office of the U.S. Trade Representative ("USTR"); and the U.S. Department of State ("DOS").

Summary and Discussion of Comments

Inasmuch as many of the comments addressed the same issues, they will be discussed herein organized by subject matter—where applicable, by section of the rules—rather than organized by individual commenter. Also, to the extent commenters made similar arguments, those arguments may be attributed collectively to a group of parties rather than to individuals.

Section 588.2—Definitions

The four commenters representing U.S. carrier interests—USA, Sea-Land, APL and Crowley—all take issue with the Proposed Rule's definition of U.S. carrier.[4] The U.S. carrier interests note

[1] USA's member companies purportedly "own and operate over 97% of all U.S.-flag liner capacity in international trade."

[2] APL and Crowley also join in the comments of USA.

[3] *I.e.*, the Governments of Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Italy, Japan, the Netherlands, Norway, Portugal, Spain, Sweden, the United Kingdom and the Commission of the European Communities.

[4] The Proposed Rule notes that the definitions of foreign and U.S. carriers are worded such that the two may overlap, in that a U.S. carrier "operates vessels documented under the laws of the United States," and a foreign carrier is one "a majority of whose vessels are documented under" foreign laws. Thus, a carrier operating some U.S.-flag vessels but even more foreign-flag vessels could be argued to fit both definitions. The Proposed Rule provides that a carrier meeting both definitions shall be considered a foreign carrier.

that U.S. carriers may be deemed, for the purpose of the 1988 Act, a "foreign carrier" under the Proposed Rule. They indicate that U.S. carriers frequently support their U.S.-flag operations with foreign-flag vessels, such as small feeder vessels, when, as APL explains, U.S.-flag vessels cannot be employed competitively. Crowley, for example, states that one of its subsidiaries, Trailer Marine Transport Corporation, employs seventeen vessels, most of which are U.S.-flag, but that of those used in foreign commerce, the majority are foreign-flag. The U.S. carrier interests are generally concerned that depending on the number of foreign-flag vessels it owns or charters, a bona fide U.S. carrier could jeopardize its standing as a carrier entitled to protections under the 1988 Act.

The U.S. carrier interests argue that Congress did not intend that recognized U.S.-flag carriers lose the protections afforded them by the new legislation by adding to their foreign-flag fleet. Rather, they contend, the "majority" language in the foreign carrier definition was adopted by Congress to prevent a foreign carrier from evading sanctions under the 1988 Act by reflagging a few of its vessels under U.S. laws. The foreign carrier definition was not, they argue, intended to constitute a "fleet composition test" or to "scrutinize or circumscribe the composition of U.S. carrier fleets." Sea-Land comments, at 4–5.

USA and the U.S. carriers all propose slightly different solutions to the question of how to define U.S. and foreign carriers. Each suggests two alternative approaches, one being simply to adopt the statutory definitions and to resolve any uncertainties as to application on a case-by-case basis. Each also suggests that an amendment of some sort may serve to clarify the matter. Crowley, for instance, proposes basing the definition of U.S. carrier on "all vessels operated by that carrier and by companies affiliated with that carrier by common control or ownership in both foreign and domestic offshore commerce," thereby solving its own problem of its foreign-flag-based subsidiaries. Crowley comments, at 2. USA suggests that a more "flexible rule" for defining U.S. carrier could be substituted, based on "U.S.-flag capacity" and corporate citizenship, rather than a "simplistic 'vessel count'." USA comments, at 3–4. Sea-Land's proposal focuses on amplifying the foreign carrier definition to disregard post-petition reflagging and to exclude carriers qualifying as U.S. citizens under section 2(a) of the Shipping Act, 1916, 46 U.S.C. 802(a). APL suggests, more generally, adopting a rule which "builds in flexibility." APL comments, at 2.

The legislative history of the 1988 Act suggests that there is some merit in the argument of the U.S. carrier interests that Congress intended its restrictive definition of foreign carriers to prevent their evading the law via reflagging, and not to attempt to circumscribe the range of U.S. carriers which may derive benefit from administration of the statute. Yet the definitions of U.S. and foreign carriers in the 1988 Act are, notwithstanding arguments to the contrary, overlapping, an issue which appears to have been implicitly left for the FMC to resolve at its discretion.

Each of the commenting U.S. carrier interests suggests that the statute's version of the definitions, however imperfect, be preserved in the Commission's rule, and that any questions be resolved on a case-by-case, "flexible" basis. The problem with this approach is that, with a statutorily imposed 120-day time limit on investigatory proceedings, an additional "sub-proceeding" to determine whether a particular carrier should be considered U.S. or foreign for the purposes of the 1988 Act could render a timely resolution of the major proceeding impossible. It will be difficult enough to complete even one 1988 Act proceeding in the allotted time.

Accordingly, the Commission is not persuaded by the suggestions that the statutory definitions be adopted for the regulations, and that an *ad hoc* resolution of definitions controversies be attempted in the course of each proceeding. Rather, the Commission considers it desirable to be able to define fairly clearly the carriers whose interests qualify for protection and the carriers who may be subject to sanctions, or at least the standards or criteria to be applied in making those determinations.

The alternative approaches suggested by the U.S. carrier interests appear to be worthy of further consideration, debate and analysis. However, each one of the alternative approaches differs from the other and, given the normal rulemaking procedure employed, none of the parties commenting in this rulemaking has had the opportunity to reply to the specific concerns and suggestions of the U.S. carrier interests. Also, the definitions of U.S. and foreign carrier are a fundamental and critical aspect of the rules, in that they will, in turn, determine the scope, efficacy, and the very nature of the proceedings conducted under the rules, and will affect the expeditiousness of those proceedings as well. For these reasons, the Commission has determined to obtain further input from interested parties on the definitions.

Rather than to delay the implementation of a Final Rule until the definitions issue is resolved, the Commission intends to proceed with the the issuance of a Final Rule and to address the definitions matter in a separate rulemaking proceeding. No other aspect of the Proposed Rule, as discussed below, has presented the Commission with any justification for not proceeding expeditiously to a Final Rule. The Final Rule adopted herein will, for the time being, mirror the statutory definitions of U.S. and foreign carriers. When the separate rulemaking is completed, Part 588 may subsequently be amended should clearer definitions be decided upon. The Commission anticipates that that proceeding will be instituted shortly by issuance of a notice of inquiry.

The only other variation from the statute's list of definitions is the Commission's addition of a definition for "voyage". That definition received only favorable comment and has been preserved in the Final Rule.

Section 588.4—Petitions

The CSG Governments request the Commission to reconsider the absence of a requirement in the rule that a petitioner allege harm to itself or produce statistical data demonstrating harm, as this absence could result in "the possibility of a large number of petitions being filed," including "frivolous petitions which could be vexatious." As noted in the Proposed Rule, however, the Commission believes that a requirement that petitioners show actual harm or produce statistical data of such would appear to circumvent the intent of the statute to allow *any* person, not just injured parties, to petition for action under the 1988 Act. Shippers or forwarders, for example, or interested U.S. government officials, may not be in a position to document the extent of harm caused a U.S. carrier by some foreign government's actions. Thus, the requirement urged by the CSG Governments could have a chilling effect on the filing of otherwise legitimate complaints, and has not been adopted in the Final Rule.

An addition which has been made to the Final Rule in this section is an additional paragraph at § 588.4(b), requiring a petitioner to identify each U.S. carrier alleged to be harmed and describing and documenting why it is considered by petitioner to be a U.S. carrier. This requirement may be further

amended as necessary when the definitions matter is resolved.

CENSA proposes an amendment to § 588.4(c), which states that petitions which fail to comply with the requirements of the previous paragraph will be rejected. CENSA requests that the Final Rule expressly state that: "Frivolous or harassing petitions will not be entertained." CENSA comments, at 2. The Commission does not find this language necessary. The requirements of § 588.4(b) for an acceptable petition constitute the applicable standard, and do not appear to want a separate criterion or test for frivolousness or harassment. A petition which meets the § 588.4(b) standards would not likely be considered frivolous or harassing. Similarly, the CSG Governments' suggestion that the Final Rule state that petitions unaccompanied by sufficient evidence will be immediately dismissed is superfluous to the language already to that effect in § 588.4(c).

Secton 588.6(c)—Information Demands and Subpoenas

Several comments address the issue of confidentiality of submissions made in the course of a 1988 Act proceeding. Section 588.6(c) of the Proposed Rule states that "persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality," and that if the Commission determines not to afford confidentiality when requested, it will advise the requester before any disclosure occurs. Thus, SCOT's suggestion that persons have an opportunity "beyond mere notice" to emphasize to the Commission the consequences of disclosure (SCOT comments, at 2) seems to overlook the opportunity already explicitly provided in the rule.

With respect to submissions made in proceedings under the 1988 Act, USA proposes that persons be afforded opportunity to withdraw or modify submissions prior to public disclosure. This is the commission's intended practice, as relates to voluntary submissions, and is implicit in the rule's statement that notice to submitters will be given prior to disclosure. Thus, no amendment to the Final Rule in this regard appears necessary.

No right of modification or withdrawal can be afforded, however, with respect to submissions made in response to § 588.6 information demands by the Commission. Any confidentiality issues arising from mandatory submissions will be handled on a case-by-case basis.[5]

CENSA requests that the Final Rule state that the Commission will not "consider, as part of the record upon which it makes findings, any information which is not made known to a party which is under investigation and as to which its right to reply is denied." Disclosure of the facts and information upon which the Commission relies to make findings and take actions is generally required under constitutional concepts of due process and provisions of the Administrative Procedure Act.[6] The Commission therefore considers it unnecessary to adopt specific procedural safeguards for matters already governed by general principles of administrative law and constitutional considerations. Moreover, the Commission disfavors adopting in advance a course of action without regard to the relevant facts and circumstances in a particular case. Such determinations are best made on an *ad hoc* basis.

Section 588.7—Notification to Secretary of State

USTR notes that the Proposed Rule provides that the Commission will notify DOS of the initiation of an investigation and may request action to seek resolution of the matter through diplomatic channels. USTR states that because it "also has responsibilities with respect to various unfair trade practices affecting trade in goods and services", it should also "be notified at the same time as the State Department under this procedure."

While such a course of action may in certain instances be appropriate, the Commission will not amend § 588.7 to require notification to USTR of the initiation of an investigation in every instance. We believe that DOS, as the U.S. executive agency charged with diplomatic functions, should be notified routinely, but that other agencies, such as USTR, should formally be advised as circumstances warrant.

Section 588.8—Action Against Foreign Carriers

USA requests that a new action or "sanction" be added to the Final Rule, in which the Commission could condition the filing of foreign carriers' tariffs on certain reciprocal responses, such as ceasing to offer rail and truck services in the United States when U.S. carriers face foreign-imposed restrictions on those activities. The Commission finds such an amendment to be superfluous, in that the list of sanctions at § 588.8 of the rule is expressly not all-inclusive (§ 588.8(a) states: "[S]uch action may include, but is not limited to: * * *"), and a "conditional" suspension of tariffs would be but a type of suspension already prescribed at § 588.8(a)(3). The Commission deliberately avoided attempting to list every possible remedy, lest an inadvertent omission mistakenly be deemed an intended restriction, and also in order to retain the highest degree of flexibility.

CENSA and the CSG Governments cite with approval language in the **SUPPLEMENTARY INFORMATION** section of the Proposed Rule which states:

> It is the Commission s intention to impose, to the extent administratively feasible, sanctions under this section which are carefully crafted so as to meet effectively the adverse foreign shipping practices, while minimizing the likelihood of causing undue or unnecessary disruption to the trade or harm to innocent third parties.

CENSA and the CSG Governments request that this statement be codified in the Final Rule itself. While the Commission is committed to careful and responsible craftsmanship in taking actions pursuant to the 1988 Act, codifying this commitment as a procedural requirement might undermine the overall efficacy of the rule by limiting the Commission's discretion and flexibility and injecting yet another issue to be addressed and litigated in each, already time-constrained proceeding. This suggestion has not, therefore, been adopted.

General Comments

Other comments on the Proposed Rule are of a more general nature, and do not require any amendments in the Final Rule. DOS notes that it "finds acceptable" the Proposed Rule, and that it trusts the "existing close cooperative relationship" between the Commission and DOS "will not only continue but will be strengthened under the new Act." As the instant rules are similar to the Commission's section 19 rules with respect to notification to DOS, the Commission anticipates that the cooperative relationship between it and DOS will continue, although the time constraints of the 1988 Act will impose additional challenges to both agencies.

USA urges that the Commission act promptly in taking action under the 1988

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[5] Mandatory submissions may be exempt from disclosure under the Freedom of Information Act, as commercially sensitive financial data or trade secrets, 5 U.S.C. 552(b)(4), or as exempt investigatory records, 5 U.S.C. 552(b)(7)(A), (D). Submissions may also be made the subject of a protective order under Rule 167 of the Commission's Rules of Practice and Procedure, 46 CFR 502.167.

[6] Also, the provisions of the Freedom of Information Act could apply to require disclosure of documents.

Act, and that it not delay initiating individual proceedings pending the finalization of this rulemaking. The 1988 Act does not require that a Final Rule serve as a condition precedent to any actions taken pursuant to the Act, and thus this rulemaking will not serve to delay the initiation of any such proceedings.

NAPA generally expresses concern with the impact of possible sanctions under the 1988 Act on U.S. ports, and does not directly address the Proposed Rule itself. NAPA also questions whether the remedies provided by the 1988 Act are not already available under the "United Nations Code of Trade and Development" [7] or bilateral trade agreements. NAPA comments, at 2. NAPA's comments on the 1988 Act itself, rather than the Proposed Rule, and its unexplained references to UNCTAD and unspecified bilateral agreements, were not deemed germane to this rulemaking.

Finally, Sea-Land opines that the sanctions made applicable to the 1920 and 1984 Acts by the 1988 Act have been "accurately incorporated" into Parts 585 and 578 of the Commission's regulations, but fears that the "authority citation" listing the 1988 Act in Part 585 (implementing section 19 of the 1920 Act) may be "misconstrued to alter the current 'flag-blind' scope" of the 1920 Act. Sea-Land suggests this matter be addressed and clarified in the Final Rule. We fail to see how citing the 1988 Act in the 1920 Act rules could somehow be erroneously construed as amending the substance of the 1920 Act itself. The only purpose for the authority citation was to note, as the **Federal Register** requires, the source of the new sanctions added to the 1920 Act rules.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

In accordance with 44 U.S.C. 3518(c)(1)(B), and except for investigations undertaken with reference to a category of individuals or entities (*e.g.*, an entire industry), any information request or requirement in this part is not subject to the requirements of section 3507(f) of the Paperwork Reduction Act because such collection of information is pursuant to a civil, administrative action or investigation by an agency of the United States against specific individuals or entities.

List of Subjects

46 CFR Part 585

Administrative practice and procedure, Maritime carriers.

46 CFR Part 587

Administrative practice and procedure, Maritime carriers.

46 CFR Part 588

Administrative practice and procedures, Confidential business information, Foreign trade, Maritime carriers, Trade practices, Transportation.

Therefore, pursuant to 5 U.S.C. 553; section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); sections 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714 and 1716; Reorganization Plan No. 7 of 1961, 75 Stat. 840; and section 10002 of the Foreign Shipping Practices Act of 1988, the Federal Maritime Commission amends parts 585 and 587 and adds a new Part 588 to Title 46 of the Code of Federal Regulations as follows:

1. The authority citation for Part 585 is revised to read to follows:

Authority: 5 U.S.C. 553; sec. 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b); secs. 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1714 and 1716; Reorganization Plan No. 7 of 1961, 75 Stat. 840; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

2. In § 585.9, paragraphs (b), (c), and (d) are revised and paragraphs (e), (f), (g) and (h) are added to read as follows:

§ 585.9 Actions to meet conditions unfavorable to shipping in the foreign trade of the United States.

* * * * *

(b) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(c) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(d) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(e) Imposition of a charge, not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(f) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part;

(g) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the unfavorable conditions described in § 585.3 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(h) Any other action the Commission finds necessary and appropriate in the public interest to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

3. The authority citation for Part 587 is revised to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(5), 15 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(5), 1714, and 1716; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

4. In § 587.7, paragraph (b) (2) and (4) are revised and paragraphs (b) (5), (6), (7) and (8) are added to read as follows:

§ 587.7 Decision; sanctions; effective date.

* * * * *

(b) * * *

[7] Actually, the United Nations Conference on Trade and Development's Code of Conduct for Liner Conferences.

(2) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

* * * * *

(4) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling or cargo or revenues with other ocean common carriers;

(5) Imposition of a charge not to exceed $1,000,000 per inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade;

(6) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part;

(7) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier which is or whose government is identified as contributing to the conditions described in § 587.2 of this part to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(8) Any other action the Commission finds necessary and appropriate to address conditions unduly impairing access of a U.S.-flag vessel to trade between foreign ports.

5. A new Part 588 is added to Subchapter D to read as follows:

PART 588—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

Sec.

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a).

§ 588.1 Purpose.

It is the purpose of the regulations of this part to establish procedures to implement the Foreign Shipping Practices Act of 1988, which authorizes the Commission to take action against foreign carriers, whose practices or whose government's practices result in adverse conditions affecting the operations of United States carriers, which adverse conditions do not exist for those foreign carriers in the United States. The regulations of this part provide procedures for investigating such practices and for obtaining information relevant to the investigations, and also afford notice of the types of actions included among those that the Commission is authorized to take.

§ 588.2 Definitions.

For the purposes of this part:

(a) "Common carrier," "marine terminal operator," "non-vessel-operating common carrier," "ocean common carrier," "person," "shipper," "shippers' association," and "United States" have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 U.S.C. app. 1702);

(b) "Foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(c) "Maritime services" means port-to-port carrier of cargo by the vessels operated by ocean common carriers;

(d) "Maritime-related services" means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others' behalf;

(e) "United States carrier" means an ocean common carrier which operates vessels documented under the laws of the United States;

(f) "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier;

(g) "Voyage" means an inbound or outbound movement between a foreign country and the United States by a vessel engaged in the United States oceanborne trade. Each inbound or outbound movement constitutes a separate voyage.

§ 588.3 Scope.

The Commission shall take such action under this part as it considers necessary and appropriate when it determines that any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons providing maritime or maritime-related services in a foreign country, result in conditions that adversely affect the operations of United States carriers in United States oceanborne trade, and do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

§ 588.4 Petitions.

(a) A petition for investigation to determine the existence of adverse conditions as described in § 588.3 may be submitted by any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States. Petitions for relief under this part shall be in writing, and filed in the form of an original and fifteen copies with the Secretary, Federal Maritime Commission, Washington, DC 20573.

(b) Petitions shall set forth the following:

(1) The name and address of the petitioner;

(2) The name and address of each party (foreign government, agency or instrumentality thereof, carrier, or other person) against whom the petition is made, a statement as to whether the party is a foreign government, agency or instrumentality thereof, and a brief statement describing the party's function, business or operation;

(3) The name and address of each United States carrier alleged to be adversely affected, and a description, and if possible, documentation, of why each is considered by petitioner to be a United States carrier;

(4) A precise description and, if applicable, citation of any law, rule, regulation, policy or practice of a foreign government or practice of a foreign carrier or other person causing the conditions complained of;

(5) A certified copy of any law, rule, regulation or other document involved and, if not in English, a certified English translation thereof;

(6) Any other evidence of the existence of such laws and practices, evidence of the alleged adverse effects on the operations of United States

carriers in United States oceanborne trade, and evidence that foreign carriers of the country involved are not subjected to similar adverse conditions in the United States.

(7) With respect to the harm already caused, or which may reasonably be expected to be caused, the following information, if available to petitioner:

(i) Statistical data documenting present or prospective cargo loss by United States carriers due to foreign government or commercial practices for a representative period, if harm is alleged on that basis, and the sources of the statistical data;

(ii) Statistical data or other information documenting the impact of the foreign government or commercial practices causing the conditions complained of, and the sources of those data; and

(iii) A statement as to why the period used is representative.

(8) A separate memorandum of law or a discussion of the relevant legal issues; and

(9) A recommended action, including any of those enumerated in § 588.8, the result of which will, in the view of the petitioner, address the conditions complained of.

(c) A petition which the Commission determines fails to comply substantially with the requirements of paragraph (b) of this section shall be rejected promptly and the person filing the petition shall be notified of the reasons for such rejection. Rejection is without prejudice to filing of an amended petition.

§ 588.5 Investigations.

(a) An investigation to determine the existence of adverse conditions as described in § 588.3 may be initiated by the Commission on its own motion or on the petition of any person pursuant to § 588.4. An investigation shall be considered to have been initiated for the purpose of the time limits imposed by the Foreign Shipping Practices Act of 1988 upon the publication in the **Federal Register** of the Commission's notice of investigation, which shall announce the initiation of the proceeding upon either the Commission's own motion or the filing of a petition.

(b) The provisions of Part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§ 502.11 of this chapter) and except as the Commission may otherwise determine by order. The precise procedures and timetables for participation in investigations initiated under this part will be established on an *ad hoc* basis as appropriate and set forth in the notice. Proceedings may include oral evidentiary hearings, but only when the Commission determines that there are likely to be genuine issues of material fact that cannot be resolved on the basis of written submissions, or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. In any event, investigations initiated under this part shall proceed expeditiously, consistent with due process, to conform with the time limits specified in the Foreign Shipping Practices Act and to identify promptly the conditions described in § 588.3 of this part.

(c) Upon initiation of an investigation, interested persons will be given the opportunity to participate in the proceeding pursuant to the procedures set forth in the notice. Submissions filed in response to a notice of investigation may include written data and statistics, views, and legal arguments. Factual information submitted shall be certified under oath. An original and 15 copies of such submissions will be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. Persons who receive information requests from the Commission pursuant to § 588.6 of this part are not precluded from filing additional voluntary submissions in accordance with this paragraph.

(d) An investigation shall be completed and a decision rendered within 120 days after it has commenced as defined in paragraph (a) of this section, unless the Commission determines that an additional 90-day period is necessary in order to obtain sufficient information on which to render a decision. When the Commission determines to extend the investigation period for an additional 90 days, it shall issue a notice clearly stating the reasons therefor.

§ 588.6 Information demands and subpoenas.

(a) In furtherance of this part, the Commission may, by order, require any person (including any common carrier, shipper, shipper's association, ocean freight forwarder, or marine terminal operator, or any officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate, and in the form and within the time prescribed by the Commission. Responses to such orders may be required by the Commission to be made under oath.

(b) The Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence as it deems necessary and appropriate in conducting an investigation under § 588.5 of this part.

(c) The Commission may, in its discretion, determine that any information submitted to it in response to a request (including a subpoena) under this section, or accompanying a petition under § 588.4, or voluntarily submitted by any person pursuant to § 588.5(c), shall not be disclosed to the public. To this end, persons submitting information for consideration in a proceeding or investigation under this part may indicate in writing any factors they wish the Commission to consider relevant to a decision on confidentiality under this section; however, such information will be advisory only, and the actual determination will be made by the Commission. In the event that a request for confidentiality is not accommodated, the person making the request will be so advised before any disclosure occurs.

§ 588.7 Notification to Secretary of State.

Upon the publication of a petition in the **Federal Register**, or on its own motion should it determine to initiate an investigation pursuant to § 588.5, the Commission will notify the Secretary of State of same, and may request action to seek resolution of the matter through diplomatic channels. The Commission may request the Secretary to report the results of such efforts at a specified time.

§ 588.8 Action against foreign carriers.

(a) Whenever, after notice and opportunity for comment or hearing, the Commssion determines that the conditions specified in § 588.3 of this part exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier which it identifies as a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include, but is not limited to:

(1) Limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(2) Suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(3) Suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers;

(4) Imposition of a charge, not to exceed $1,000,000 per voyage;

(5) A request to the collector of customs at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes, 46 U.S.C. app. 91, to any vessel of a foreign carrier that is identified by the Commission under this section;

(6) A request to the Secretary of the department in which the Coast Guard is operating to deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under this section to any port or place in the United States or the navigable waters of the United States, or to detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States; and

(7) Any other action the Commission finds necessary and appropriate to address adverse foreign shipping practices as described in § 588.3 of this part.

(b) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate U.S. Government agencies prior to taking any action under this action.

(c) Before any action against foreign carriers under this section becomes effective or a request under this section is made, the Commission's determination as to adverse conditions and its proposed actions and/or requests shall be submitted immediately to the President. Such actions will not become effective nor requests made if, within 10 days of receipt of the Commission's determination and proposal, the President disapproves it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6546 Filed 3-20-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 87-120; FCC 89-15]

Flexible Allocation of Frequencies in Domestic Public Land Mobile Service for Paging and Other Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has determined that the common carrier frequencies allocated in 47 CFR 22.501(b) will be available to common carriers for the following services: a) any two-way public land mobile service; b) any one-way public land mobile service; c) control or repeater stations or other point-to-point common carrier functions. All use must conform to the existing interference, bandwidth, and emissions standards of 47 CFR Part 22 for these frequencies. The Commission is terminating a rulemaking proceeding regarding advisory labeling of scanning and general purpose radio receivers without adopting any changes to its rules or implementing new policy.

EFFECTIVE DATE: April 20, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632-6450.

SUPPLEMENTARY INFORMATION:

This is a summary of the commission's First Report and Order, CC Docket No. 87-120, adopted January 18, 1989, and released February 15, 1989.

The full text of commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington DC 20037.

Summary of First Report and Order

On May 14, 1987, the FCC issued a Notice of Proposed Rulemaking (NPRM), 2 FCC Rcd. 2795, 52 FR 19741 (May 27, 1987) requesting comments on proposed changes to its rules regarding the paging and two-way mobile frequency allocations. The proposed changes would affect § 22.501(b), the conventional mobile two-way channels, § 22.501(k), the UHF-TV band common carrier channels available for two-way use in 13 large metropolitan areas, and § 22.501(p), regarding the remaining nationwide paging frequency. This *First Report and Order* addresses issues pertaining to §§ 22.501(b) and 22.501(p), and amends the former rule accordingly. The Order is divided into two sections; the first section addresses convention two-way mobile frequencies (§ 22.501(b) of the Rules) and the second section addresses nationwide paging frequencies (§ 22.501(p) of the Rules). Consideration of issues pertaining to § 22.501(k) and any corresponding amendments thereto will be addressed in a *Second Report and Order* that will be issued shortly.

The FCC proposed, in the NPRM, making conventional mobile frequencies available for use in an unpaired configuration, either by licensing the base and mobile frequencies separately or continuing to license them in pairs. If licensed in pairs, it proposed to permit licensees to deploy the spectrum capacity as they wished, such as offering one or two-way service, control and other point-to-point functions, and resale of channel capacity. If licensed separately, it proposed three possible outcomes: first, an applicant could be licensed for a pair of frequencies if it planned to use both; second, an applicant could be licensed only for the base station frequency; third, an applicant could be licensed only for the mobile frequency. In addition, it requested comments concerning appropriate interference standards and need showings for the various alternatives.

In the NPRM the FCC also requested comment on the possibility of allowing unrestricted local paging by the nationwide network licensees. The FCC additionally proposed that the third nationwide paging frequency be removed from that allocation and be reallocated to multiple-address one-way signalling systems.

The FCC found that unpairing the two-way mobile channels is unwieldy from both an administrative and a licensing viewpoint. Establishing a data base for mobile frequency use, for remote receivers and for changes in these factors would be a heavy burden on the Commission's resources. Flexibility in service offerings may be affected if single-channel licensees were foreclosed from offering two-way service. Finally, the commenters convinced the FCC that there will continue to be a need for the paired channels. Accordingly, the FCC hereby maintains existing rules for the paired licensing configuration of conventional mobile frequencies. In addition, the FCC found that it is preferable to permit the marketplace to determine which

common carrier services will be offered on the conventional two-way mobile frequencies, rather than to specify permitted uses over these channels, which specifications may unnecessarily restrict the introduction of new kinds of common carrier services. Accordingly, the FCC hereby amends its rules to permit licensees to two-way common carrier channels to offer any type of mobile two-way or one-way common carrier services, to use their channel capacity for common carrier control or any other common carrier point-to-point function, and to resell their channel capacity for mobile common carrier uses. The one-way functions may be offered on either the base or the mobile channel, however, use of mobile transmitters (other than mobile units and rural radio services) will be only on a developmental basis. Technical standards for conventional mobile frequencies will remain the same notwithstanding the uses made of them by licensees.

The FCC also found that some entities appear to be interested in applying for and using the unassigned nationwide paging frequency. Therefore, it decided to defer, for the time being, its proposal to reallocate the channel. Instead, in an effort to foster additional competition in the nationwide paging market, it will reopen the remaining nationwide paging frequency for applications. A public notice will be issued shortly, setting forth filing procedures. In order to ensure that all nationwide paging systems operate under the same rules, applicants for this frequency must propose a one-way communications service that can be used on an intercity, nationwide basis. The FCC will continue to require that any local use of the nationwide frequency may not interfere with provision of inter-city, nationwide service. However, it will remove the restriction that the licensee must be "in operation" on a nationwide basis before incidental local service can be offered. In the interest of fair and equitable treatment for members of the same class of license, this policy of increased flexibility is also applicable to the two existing nationwide paging frequency licensees.

Ordering Clauses

Wherefore, for the foregoing reasons, Part 22 of the Commission's Rules *Is Hereby Amended* as discussed herein;

It is Further Ordered that the rule changes made herein *Will Become Effective* April 20,1989.

List of Subjects in 47 CFR Part 22

Public mobile service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (b) as follows:

§ 22.501 Frequencies

* * * * *

(b) The following base and mobile channel frequencies may be assigned on a paired basis to communications common carriers for the following services:

(1) Any two-way public land mobile service;

(2) Any one-way public land mobile service;

(3) Control or repeater stations or other point-to-point common carrier functions.

All use must conform to the interference, bandwidth and emissions standards of this Part for these frequencies.

Base station frequencies (MHz)—	Mobile dispatch, and auxiliary test station frequencies (MHz)
152.03	158.49
152.06	158.52
152.09	158.55
152.12	158.58
152.15	158.61
152.18	158.64
152.21	158.67
152.51*	157.77*
152.54*	157.80*
152.57*	157.83*
152.60*	157.86*
152.63*	157.89*
152.66*	157.92*
152.69*	157.95*
152.72*	157.98*
152.75*	158.01*
152.78*	158.04*
152.81*	158.07*
454.025	459.025
454.050	459.050
454.075	459.075
454.100	459.100
454.125	459.125
454.150	459.150
454.175	459.175
454.200	459.200
454.225	459.225
454.250	459.250
454.275	459.275
454.300	459.300
454.325	459.325
454.350	459.350
454.375*	459.375*
454.400*	459.400*
454.425*	459.425*
454.450*	459.450*
454.475*	459.475*
454.500*	459.500*
454.525*	459.525*
454.550*	459.550*
454.575*	459.575*
454.600*	459.600*
454.625*	459.625*
454.650*	459.650*

* * * * *

3. Section 22.16 is amended by revising paragraph (e) as follows:

§ 22.16 Objective Need Standards

* * * * *

(e) An application for an additional location on the same frequency as an authorized station will be considered as a "fill-in", and no loading study will be needed, if the reliable service area contour of the proposed transmitter is at least 50% encompassed by the reliable service area contour of another non "fill-in" transmitter(s) on the same frequency. Applicants relying on this subsection must provide the following statement in their application:

I hereby certify that this application for a "fill-in" transmitter, filed pursuant to § 22.16(e), relies solely on the reliable service area contour(s) of non-"fill-in" transmitter(s) as the basis for the 50% service area overlap requirement of Section 22.16(e).

[FR Doc. 89-6481 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket No. 78-72, Phase I; FCC 89-54]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted certain changes to the Part 69 access charge rules by repealing § 69.605(c)(1) of its rules regarding certain eligibility criteria for average schedule treatment of local exchange carriers. This action was taken pursuant to a United States District Court of Appeals Order remanding § 69.605(c)(1) to the Commission for further consideration. After review of the Court's Order, the

Commission concluded that the most appropriate response to the Court's mandate was to repeal § 69.605(c)(1) of its rules.

EFFECTIVE DATE: March 9, 1989.

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

FOR FURTHER INFORMATION CONTACT: Cynthia Work, Policy and Program Planning Division, Common Carrier Bureau (202) 632–9342.

SUPPLEMENTARY INFORMATION:

Summary of Memorandum Opinion and Order

1. As part of a comprehensive access charge plan, the Commission's rules established certain eligibility criteria for average schedule treatment of local exchange carriers. Section 69.605(c)(1) sets forth the criteria. On February 5, 1988, the United States Court of Appeals for the District of Columbia released an Order remanding to the Commission for further consideration that section of the rules, *ALLTEL Corp.* v. *FCC*, 838 F.2d 551 (D.C. Cir., 1988). In the *ALLTEL* decision, the Court found that the Commission had "failed to supply a reasoned basis for the average schedule eligibility rule and that, absent such a basis, the average schedule rule is arbitrary with or without the exception for companies affiliated with groups of a certain size."

2. The Commission concluded that, on the basis of the record compiled in this proceeding to date, the most appropriate response to the Court's mandate was to repeal § 69.605(c)(1) of its rules.

Ordering Clauses

Accordingly, *It is ordered*, That part 69 of this Commission's Rules, 47 CFR Part 69, is amended.

List of Subjects in 47 CFR Part 69

Access charges, Common carrier, Resale, Wide area telephone service (WATS)

Part 69 of Title 47 of the Code of the Federal Regulations is amended as follows:

PART 69—ACCESS CHARGES

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.605 is amended by revising paragraph (c) to read as follows:

§ 69.605 Reporting and distribution of pool access revenues.

* * * * *

(c) Except as provided in paragraph (b) of this section, payments to average schedule companies that are computed in accordance with § 69.606 shall be disbursed before any other funds are disbursed. For purposes of this part, a telephone company that was participating in average schedule settlements on December 1, 1982, shall be deemed to be an average schedule company except that any company that does not join in association tariffs for all access elements shall not be deemed to be an average schedule company.

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Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–6482 Filed 3–20–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–179; RM–6034]

Radio Broadcasting Services; Eufaula, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 250A to Eufaula, Alabama, as that community's second local broadcast service, in response to a petition for rule making filed by Paul H. Reynolds and Virgle Leon Strickland. Reference coordinates utilized for Channel 250A at Eufaula are 31–56–56 and 85–08–42. With this action, the proceeding is terminated.

DATES: Effective April 26, 1989. The window period for filing applications on Channel 250A at Eufaula, Alabama, will open on April 27, 1989, and close on May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–179, adopted February 22, 1989 and released March 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Alabama, by revising the entry for Eufaula, to add Channel 250A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–6588 Filed 3–20–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–109; RM–5957]

Radio Broadcasting Services; Basalt, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 291A to Basalt, Colorado, as that community's first local broadcast service, in response to a petition for rule making filed by Basalt Communications Company. Reference coordinates utilized for Channel 291A at Basalt are 39–20–48 and 107–08–18. With this action, the proceeding is terminated.

DATES: Effective April 26, 1989. The window period for filing applications on Channel 291A at Basalt, Colorado, will open on April 27, 1989, and close on May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–109, adopted February 22, 1989, and released March 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Colorado, by adding Basalt, Channel 291A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-6589 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-622; RM-5844]

Radio Broadcasting Services; Pueblo, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 264C for Channel 264C1 at Pueblo, Colorado, and modifies the Class C1 license of Surrey Front Range Limited Partnership for Station KATM-FM, as requested, to specify operation on the higher class channel, thereby providing the surrounding area with an additional wide coverage area FM service. Reference coordinates for Channel 264C at Pueblo are 38-35-00 and 104-31-40. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-622, adopted February 22, 1989, and released March 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended by revising the entry for Pueblo by deleting Channel 264C1 and adding Channel 264C.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-6590 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-268; RM-6141]

Radio Broadcasting Services; Chandler, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 228A to Chandler, Indiana, as that community's first local broadcast service, in response to a petition for rule making filed by Brent R. Wookey. Reference coordinates utilized for Channel 228A at Chandler are 38-02-36 and 87-22-18. With this action, the proceeding is terminated.

DATES: Effective April 26, 1989. The window period for filing applications on Channel 228A at Chandler, Indiana, will open on April 27, 1989, and close on May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-268, adopted February 22, 1989, and released March 10, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under Indiana, by adding Chandler, Channel 228A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-6591 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-199; RM-6306]

Radio Broadcasting Services; Fairbury, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Siebert Communications, Inc., substitutes Channel 257C1 for Channel 257A at Fairbury, Nebraska, and modifies its license for Station KUTT(FM) to specify operation on the higher powered channel. Channel 257C1 can be allotted to Fairbury in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 40-08-18 and West Longitude 97-10-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-199, adopted February 15, 1989, and released March 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Nebraska is amended by revising the entry for Fairbury by adding Channel 257C1 and deleting Channel 257A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-6592 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Addition of Species by the Government of India to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds 26 species of wildlife to 50 CFR 23.23, pursuant to their addition to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention). These additions were initiated at the request of India. Appendix III comprises species subject to regulation in particular party nations that have requested the cooperation of other Parties in controlling trade in such species.

DATES: These additions to Appendix III enter into effect on March 16, 1989, under the terms of the Convention. Therefore, this rule is effective on that date.

ADDRESSES: Send correspondence concerning this document to the Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the above address, or telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain species of animals and plants. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes native species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Trade in Appendix III species, including any readily recognizable part or derivative, requires the issuance of either an export permit, a re-export certificate, or a certificate of origin. Export permits are required if the shipment originates from the nation that has added the species in Appendix III. Export to or from other Party nations requires presentation of "certificates of origin," or, in the case of re-export, "certificates from the nation of re-export," which show that the specimen was processed in that nation and/or is being re-exported.

This rule includes in the Code of Federal Regulations (CFR) additions to Appendix III requested by the Government of India, pursuant to Article XVI, paragraph 1 of the Convention. India requested the addition of 26 species of mammal (names are given below under "Regulation Promulgation"). The Convention's Secretariat notified all party nations of these additions on December 16, 1988. In accordance with Article XVI, paragraph 2 of the Convention, these additions take effect 90 days after notification, i.e., on March 16, 1989.

Any Party may enter a reservation at any time on any species added to Appendix III, thereby exempting itself from implementing the Convention for that particular species. The limitations on the effect of reserving in alleviating importers and exporters from permit requirements was thoroughly discussed in a previous **Federal Register** document (52 FR 43924; November 17, 1987).

As previously proposed (52 FR 43924; November 17, 1987) and adopted (53 FR 9945; March 28, 1988, with printing errors corrected in 53 FR 12497; April 14, 1988), the Service has made a procedural change to usually request comments on reservations only at the time Appendix III additions of species to the Convention are included in the Code of Federal Regulations. With regard to the addition of the 26 species covered by this rule, the Service does not perceive any significant biological, trade, or legal issue that would warrant recommending the entering of a reservation, and thus, it is unlikely that comments on reservations would be received or reservations taken, as discussed more fully in the March 28, 1988, **Federal Register** (53 FR 9945) notice on the procedural change. For these reasons and because reservations can be entered at any future time if deemed appropriate, good cause exists to omit the proposed rule notice and public comment process, because it would be unnecessary and contrary to the public interest (5 U.S.C. 553(b)). Because the species covered in this notice will be added to Appendix III of the Convention effective March 16, 1989, and because of the other reasons mentioned above, the Service finds that good cause exists for making this rule effective upon the date that the species are added to Appendix III (5 U.S.C. 553(d)).

Public Comments

Therefore, the Service announces for the first time the listing of the 26 species by India. The Service does not propose to recommend a reservation and would consider doing so only if valid and compelling reasons are presented to show that implementation of the listing would be contrary to the interests or laws of the United States. Inasmuch as reservations to Appendix III can be entered *at any time*, the Service now solicits comments on taking of reservations on the listing of the 26 species. The Service will consider any comments received and recommend entering reservations if appropriate.

Note: The Department has determined that amendments to the Convention's Appendices, which result from actions of the Parties to the Convention, do not require the preparation of Environmental Assessments as defined under authority of the National Environmental Policy Act (42 U.S.C. 4321-4347). The Department also has determined that this listing action is not a rule for purposes of Executive Order 12291 and the Regulatory Flexibility Act (5 U.S.C., 601 *et seq.*). Notices on Appendix III species listings do not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This document was prepared by Ron Nowak, Staff Zoologist, Office of Scientific Authority, under the authority

of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Regulation Promulgation

For reasons set forth above, the Service amends Part 23 of Title 50, Code of Federal Regulations, as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249, and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1531 *et seq.*

§ 23.23 [Amended]

2. Amend § 23.23(f) by adding the following species of animals in alphabetical order under the appropriate taxonomic category:

Species	Common name	Appendix	Date listed (month/day/year)
Class Mammalia:	Mammals:		
Order Rodentia:	Rodents:		
Marmota caudata	Long-tailed marmot	III (India)	3/16/89
Marmota himalayana	Himalayan marmot	do	3/16/89
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
Arctictis binturong	Binturong	do	3/16/89
Canis aureus	Golden jackal	do	3/16/89
Herpestes auropunctatus	Small Indian mongoose	do	3/16/89
Herpestes edwardsi	Indian gray mongoose	do	3/16/89
Herpestes fuscus	Indian brown mongoose	do	3/16/89
Herpestes smithi	Ruddy mongoose	do	3/16/89
Herpestes urva	Crab-eating mongoose	do	3/16/89
Herpestes vitticollis	Stripe-necked mongoose	do	3/16/89
Martes flaviqula (including *M. qwatkinsi*)	Yellow-throated marten	do	3/16/89
Martes foina intermedia	Beech marten	do	3/16/89
Mustela altaica	Mountain weasel	do	3/16/89
Mustela erminea	Ermine	do	3/16/89
Mustela kathiah	Yellow-bellied weasel	do	3/16/89
Mustela sibirica	Siberian weasel	do	3/16/89
Paguma larvata	Mashed palm civet	do	3/16/89
Paradoxurus hermaphroditus	Common palm civet	do	3/16/89
Paradoxurus jerdoni	Jerdon's palm civet	do	3/16/89
Viverra megaspilla	Large spotted civet	do	3/16/89
Viverra zibetha	Large Indian civet	do	3/16/89
Viverricula indica	Small Indian civet	do	3/16/89
Vulpes bengalensis	Bengal fox	do	3/16/89
Vulpes vulpes griffithi	Griffith's red fox	do	3/16/89
Vulopes vulpes montana	Montane red fox	do	3/16/89
Vulpes vulpes pusillus (including *V.v. leucopus*)	Little red fox	do	3/16/89

Dated: March 7, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-6599 Filed 3-20-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 53
Tuesday, March 21, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 55, 56, and 70

[Docket No. PY-89-002]

Increase in Fees and Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise charges for Federal voluntary egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services. These charges would be increased to reflect higher costs associated with these programs due to the 4.1-percent increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATE: Comments must be received on or before April 20, 1989.

ADDRESS: Written comments may be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3944, South Agriculture Building, Post Office Box 96456, Washington, DC 20090-6456. For further information regarding comments, see "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Larry W. Robinson, Chief, Grading Branch, 202-447-3271.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

An initial determination has been made that this proposed rule is not a major rule under Executive Order 12291. It will not (i) result in an annual effect on the economy of $100 million or more; (ii) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (iii) have significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule has been reviewed for cost effectiveness under U.S. Department of Agriculture procedures established in Departmental Regulation 1512—1 implementing Executive Order 12291. It would increase fees and charges to cover escalating costs of providing Federal voluntary grading, inspection, and laboratory services. Federal law requires that users pay for these services. It is anticipated that these increases will not have a significant economic effect on producers, packers, and consumers. Furthermore, any denial or disruption of grading/inspection services due to inadequate fees and charges could result in adverse impacts on the orderly marketing of poultry, rabbits, eggs, and egg products and on the quality of products available to consumers.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service (AMS) has determined that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because (i) the fees and charges merely reflect, on a cost-per-unit-graded/inspected basis, a minimal increase in the costs currently borne by those entities utilizing the services; and (ii) competitive effects are offset under the major voluntary programs (resident shell egg and poultry grading) through administrative charges based on the volume of product handled; i.e., the cost to users increases in proportion to increased volume.

Comments

Interested persons are invited to submit written comments concerning these proposed amendments. Comments must be sent in duplicate to the Standardization Branch and should bear a reference to the date and page of this issue of the **Federal Register.** Comments submitted pursuant to this document will be made available for public inspection in the Washington, DC, Standardization Branch during regular business hours.

Background and Proposed Changes

Each fiscal year, the fees for services rendered to operators of official poultry, rabbit, shell egg, and egg products by the AMS are reviewed. A cost analysis is performed to determine if such fees are adequate to recover the cost or providing the services. The fees are determined by the employee's salary and fringe benefits, cost of supervision, travel, and other and overhead administrative costs.

The Agricultural Marketing Act of 1946, as amended, provides for the collection of fees approximately equal to the cost of providing egg products inspection; voluntary egg, poultry, and rabbit grading; and laboratory services.

The last fee increase was effective on May 1, 1987. Since then, Federal employees' salaries have increased by about 6 percent, including a 4.1-percent increase in salaries beginning in January 1989. Also, health benefits are up 28 percent, and salaries of federally licensed State employees have increased by about 9 percent. Additionally, the costs for workers' compensation increased 15 percent.

With the exception of salary increased for federally licensed State graders, costs of supervision and other overhead and administrative costs have also increases for the reasons described above. These costs are covered by an administrative service charge assessed on each case of shell eggs and each pound of poultry handled in plants using resident grading service. In 1987, these rates were established at $.026 per case of shell eggs and $.00026 per pound of poultry.

These rates would be changed to $.027 per case of shell eggs and $.00027 per pound of poultry. Also, these charges were set a minimum of $130 and maximum of $1,300 per billing period for each official plant. It is proposed to change these amounts to $135 and $1,350, respectively.

Overall, resident fees and charges would be increased about 10 percent.

Due to the situations described above, the hourly rate for nonresident voluntary grading and inspection service would be increased from $23.20 to $24.12. Likewise, the rate for such services performed on Saturdays, Sundays, or holidays would be

increased from $24.92 each to $25.92. The hourly rate for laboratory analyses for other than individual test would be increased from $29.32 to $30.52, and the fees for individual tests would be increased approximately 4 percent. Administrative charges for the resident voluntary rabbit grading and egg products inspection programs and nonresident voluntary continuous poultry and egg grading programs will continue to be based on 25 percent of the grader's or inspector's total salary costs. The minimum charge per billing period for these programs would be increased from $130 to $135 per offical plant.

Information Collection Requirements and Recordkeeping

Information collection requirements and recordkeeping provisions contained in 7 CFR Parts 55, 56, and 70 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35, and 7 CFR Part 55 has been assigned OMB No. 0581–0146; and 7 CFR Part 56 has been assigned OMB No. 0581–9128; and 7 CFR Part 70 has been assigned OMB No. 0581–0127.

List of Subjects

7 CFR Part 55

Egg products, Voluntary inspection service.

7 CFR Part 56

Shell eggs, Voluntary grading service.

7 CFR Part 70

Poultry, Poultry products, Rabbit products, Voluntary grading service.

For reasons set out in the preamble and under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), it is proposed to amend Title 7, Parts 55, 56, and 70 of the Code of Federal Regulations, as follows.

PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

2. Section 55.510 is amended by revising paragraphs (b) and (c) to read as follows:

§ 55.510 Fees and charges for services other than on continuous resident basis.

* * * * *

(b) Fees for product inspection and sampling for laboratory analysis will be based on the time required to perform the services. The hourly charge shall be $24.12 and shall include the time actually required to perform the sampling and inspection, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from the Supervisor.

* * * * *

3. Section 55.550 is revised to read as follows:

§ 55.550 Laboratory analysis fees.

(a) The fees listed for the following individual laboratory analyses cover costs involved in the preparation and analysis of the product, certificate issuance, and personnel and overhead costs other than the expenses listed in § 55.530.

	Fee
Solids	$15.26
Fat	30.52
Bacteriological plate count	15.26
Bacteriological direct count	30.52
Coliforms: [1]	
Step 1	22.89
Step 2	22.89
E. coli (presumptive): [2]	
In addition to coliform anaylsis—	
Step 1	No charge
Step 2	22.89
Without coliform analysis—	
Step 1	22.89
Step 2	22.89
Yeast and mold count	15.26
Sugar	38.15
Salt	38.15
Color:	
NEA	22.89
B-Carotene	30.52
Whipping test	15.26
Whipping test plus bleeding	22.89
Fat film test	38.15
Oxygen	15.26
Glucose:	
Quantitative	30.52
Quantitative	22.89
Palatability and odor:	
First sample	15.26
Each Additional sample	7.63
Staphylococcus	45.78
Salmonella: [3]	
Step 1	30.52
Step 2	15.26
Step 3	30.52

[1] Coliform test may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] E. coli test maybe in two steps as follows: Step 1—presumptive coliform test through lauryl sulfate tryptose broth; Step 2—presumptive E. coli test through eosin-methylene blue agar.

[3] Salmonella test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple-sugar-iron and lysine-iron agars; Step 3—confirmatory test through biochemicals.

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The hourly rate shall be $30.52.

4. Section 55.560 is amended by revising paragraph (a)(3) to read as follows:

§ 55.560 Charges for continuous inspection and grading service on a resident basis.

* * * * *

(a) * * *

(3) An administrative service charge equal to 25 percent of the grader's or inspector's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 56—GRADING OF SHELL EGGS AND U.S. STANDARDS, GRADES, AND WEIGHT CLASSES FOR SHELL EGGS

5. The authority citation for Part 56 continues to read as follows:

Authority: Secs. 202–208 of the Agricultural Marketing Act of 1946, as amended. (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

6. Section 56.46 is amended by revising paragraphs (b) and (c) to read as follows:

§ 56.46 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be $24.12 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from te Supervisor.

7. Section 56.52 is amended by revising paragraph (a)(4) to read as follows:

§ 56.52 Continuous grading performed on a resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by $ .027, except that the minimum charge per billing period shall be $135 and the maximum charge shall be $1,350. The minimum charge also applies where an

approved application is in effect and no product is handled.

* * * * *

8. Section 56.54 is amended by revising paragraph (a)(2) to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

9. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 202–208 of the Agricultural Marketing Act of 1946, as amended, (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

10. Section 70.71 is amended by revising paragraphs (b) and (c) to read as follows:

§ 70.71 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $24.12 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $25.92 per hour. Information on legal holidays is available from the Supervisor.

11. Section 70.76 is amended by revising paragraph (a)(2) to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

12. Section 70.77 is amended by revising pargraphs (a)(4) and (5) to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $ .00027, except that the minimum charge per billing period shall be $135 and the maximum charge shall be $1,350. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $135 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Done at Washington, DC, on: March 16, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89–6620 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

Federal Grain Inspection Service

7 CFR Part 810

Official U.S. Standards for Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is proposing to amend the Official United States Standards for Grain to show the proper method for recording the percentage of splits in soybeans.

DATE: Comments must be submitted on or before April 20, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090–6454. Alternatively, telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr., TLX:7607351, ANS:FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447–4628.

All comments received will be made available for public inspection at room 0628 South Building, 1400 Independence Avenue, SW., Washington, DC during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. *et seq.*). Further, the standards are applied equally to all entities.

Proposed Action

In the **Federal Register** of June 30, 1987 (52 FR 24414) FGIS published a final rule that included the complete text of the Official United States Standards for Grain with various amendments. It was FGIS' intention that the recording of splits in soybeans (7 CFR 810.104(b)) continue to be recorded in whole percents with fractions of a percent being disregarded, as with dockage in barley, flaxseed, rye, and sorghum. However, in the June 30, 1987 final rule the reference to recording the percentage of splits in soybeans was inadvertently placed with classes and subclasses in wheat, flint corn, flint and dent corn, waxy corn, classes in barley, and the percentage of each kind of grain in mixed grain which are recorded to the nearest whole percent. FGIS proposes to amend § 810.104(b) to be consistent with current practice.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the United States Grain Standards Act, upon request, such information may be orally presented in an informal manner. Also, pursuant to section 4(b) of the Act, no standards established or amendments or revocations of standards are to become effective less

than one calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. If adopted FGIS intends that these changes should become effective upon the publication of the final rule in the Federal Register. These changes would be made for clarity and if adopted should be made as soon as possible.

List of Subjects in 7 CFR Part 810

Export, Grain.

PART 810—OFFICIAL U.S. STANDARDS FOR GRAIN

For reasons set forth in the preamble, 7 CFR Part 810 is proposed to be amended as follows:

1. The authority citation for Part 810 continues to read as follows:

Authority Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

§ 810.104 [Amended]

2. Section 810.104(b) is amended by revising the first sentence to read: "The percentage of splits in soybeans, and the percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded."

3. Section 810.104(b) is further amended by removing the phrase "splits in soybeans;" after the phrase "classes in barley;" in the ninth sentence.

Dated: March 8, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89-6624 Filed 3-20-89; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV-89-019PR]

Filberts/Hazelnuts Grown in Oregon and Washington; Revisions of Administrative Rules and Regulations Concerning the Disposition of Substandard Filberts/Hazelnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the removal of a provision allowing for the disposition of small-sized filberts in export outlets and the addition of safeguards on the disposition of inshell or shelled substandard filberts/hazelnuts for animal feed or oil. The Filbert/Hazelnut Marketing Board (Board) unanimously recommended the changes to the rules and regulations. The proposed action is authorized under the marketing order for filberts/hazelnuts grown in Oregon and Washington. These changes are necessary in order to eliminate an outdated section in the rules and regulations and to ensure that inshell or shelled substandard filberts/hazelnuts are disposed of in proper outlets.

DATE: Comments must be received by April 20, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. All comments should reference the docket number and the date and page number of this issue of the Fedeal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-5120.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

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

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

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 filbert/hazelnut producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of filbert/hazelnut handlers and producers may be classified as small entities.

This proposed rule would delete an unused section in the rules and regulations and add a new section concerning the disposition of inshell and shelled substandard filberts/hazelnuts.

The first change recommended by the Board would delete § 982.453 which currently authorizes the disposition of inshell small-sized filberts/hazelnuts in export markets. The Board has recommended that § 982.453 be deleted from the rules and regulations since the provision is no longer used by handlers. At the present time, the industry practice is to shell small-sized filberts/hazelnuts, instead of shipping them inshell into export markets. Inshell small-sized filberts/hazelnuts are substandard as defined by § 982.45 of the marketing order, which requires inshell filberts/hazelnuts to meet Oregon No. 1 grade and medium size in order to be handled by handlers. Therefore, handlers currently are shelling small-sized filberts/hazelnuts with the intent of making minimum grade standards for shelled filberts/hazelnuts.

The second change would add a monitoring procedure for the disposition of inshell and shelled substandard filberts/hazelnuts. The establishment of such a procedure is authorized pursuant to § 982.53 of the order. The Board has indicated that filbert/hazelnut production is increasing and, as a result, a larger quantity of inshell and shelled substandard filberts/hazelnuts and filbert/hazelnut waste is available for utilization. Currently, handlers dispose of shelled substandard filberts/hazelnuts for use as livestock feed, in feed products, or for crushing into oil. However, such disposition is not monitored by the Board. The Board has received a number of inquiries from handlers and users of substandard filberts/hazelnuts concerning the sale of substandard filberts/hazelnuts and filbert/hazelnut waste to be used in these outlets. The proposed procedure would enable the Board to monitor the disposition of inshell and shelled substandard filberts/hazelnuts to ensure

that these filberts/hazelnuts do not enter normal market outlets for merchantable filberts/hazelnuts. Merchantable filberts/hazelnuts are those that meet applicable inshell or shelled minimum grade requirements. This change would enable the industry to ensure the quality of inshell and shelled filberts/hazelnuts entering normal market outlets.

This rule would establish new reporting requirements. Under this proposal, users (crushers, livestock feed manufacturers, and livestock feeders) who are interested in purchasing substandard filberts/hazelnuts would be required to file F/H Form D with the Board in order to be approved and maintained on an approved list at the Board's office. The Board would have the authority to deny any user approval if the Board finds that such user is not complying with the proper procedures for substandard filbert/hazelnut disposition.

F/H Form D would include the location and a description of the user's disposal facilities and a certification to the Board and the Secretary of Agriculture that the applicant would: (1) Crush, manufacture feed, or feed to livestock such substandard filberts/hazelnuts at the location specified by the user; (2) use such filberts/hazelnuts only for the purpose of crushing into oil, manufacturing into livestock feed or livestock feeding; (3) permit the inspection of substandard filberts/hazelnuts received by the user and also the inspection of the user's premises; and (4) keep records of receipts, holdings, and usage of substandard filberts/hazelnuts for two years after the end of each marketing year and make such records available for inspection by representatives of the Board or the U.S. Department of Agriculture. Users would also agree to submit any additional reports that may be required and to certify such reports for correctness and accuracy. It is estimated that F/H Form D would take less than 20 minutes to complete.

A second form would be required to be submitted to the Board by handlers for each shipment of substandard filberts/hazelnuts to an approved user. F/H Form D1 would list the quantities of substandard product disposed of or shipped. It is estimated that the form would take less than 5 minutes to complete.

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

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3507], the new information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is proposed to be amended as follows:

1. The authority citation for 7 CFR Part 982 continues to read as follows:

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

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Administrative Rules and Regulations

2. Section 982.453 is revised to read as follows:

§ 982.453 Disposition of substandard filberts/hazelnuts.

The Board shall maintain a list of approved users who are crushers, livestock feed manufacturers, or livestock feeders, and of the locations of the facilities to which substandard filberts/hazelnuts may be shipped. Users interested in purchasing substandard filberts/hazelnuts or filbert/hazelnut waste must make prior application to the Board on F/H Form D to be included on the approved list of such users. Each handler who disposes of substandard filberts/hazelnuts to an approved user shall, upon shipment, report to the Board on F/H Form D1 the quantities disposed of or shipped. Substandard filberts/hazelnuts disposed of to an approved user may only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. The Board may deny approval to any user application, or may remove any user from the approved list when such denial or removal is deemed necessary to ensure control over disposition of substandard filberts/hazelnuts. This may occur if the Board determines that substandard filberts/hazelnuts are not properly shipped to, or utilized at, approved facilities, in compliance with this requirement. F/H Form D includes the location and description of the disposal facilities to be used as well as a certification to the Board and the Secretary of Agriculture that the applicant will:

(a) Crush, manufacture feed, or feed to livestock such filberts/hazelnuts at the location:

(b) Use such filberts/hazelnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(c) Permit such inspection of premises and of filberts/hazelnuts received and held, and such examination of books and records covering filbert/hazelnut transactions as the Board may require;

(d) Keep a record of receipts, holdings, and use of substandard filberts/hazelnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(e) Make such reports, certified to the Board and the Secretary of Agriculture as to their correctness, as the Board with the approval of the Secretary may require.

Dated: March 16, 1989.

Robert O. Keeney,

Director, Fruit and Vegetable Division.

FR Doc. 89–6621 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1040

[Docket No. AO–225–A39; DA–88–047]

Milk in the Southern Michigan Marketing Area; Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rules.

SUMMARY: This notice extends until March 31, 1989, the deadline for filing exceptions to the February 21, 1989, recommended decision concerning proposed amendments to the Southern Michigan milk order. A proprietary handler requested the additional time to prepare exceptions. The petition states that more time is needed because the recommended decision was not received promptly and, therefore, 21 days for filing comments was not sufficient time to prepare appropriate comments.

DATE: Exceptions now are due on or before March 31, 1989.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk,

Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:

Notice of Hearing: Issued April 29, 1988; published May 4, 1988 (53 FR 15851).

Extension of Time for Filing Briefs: Issued July 19, 1988; published July 22, 1988 (53 FR 27699).

Recommended Decision: Issued February 21, 1989; published February 24, 1989 (54 FR 7938).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area which was issued on February 21, 1989, is hereby extended to March 31, 1989.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1040 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). Signed at Washington, DC, on: March 16, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89–6623 Filed 3–20–89; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1065

[Docket No. DA–89–013]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to continue to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of April through August 1989 the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than 7 days after publication of this notice in the **Federal Register**.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090–6456, (202) 447–7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of April through August 1989.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April 1989 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during the regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of April through August 1989. The specific revisions would increase the diversion limitation percentages for the months of April through August 1989 by 20 percentage points, from the present 50 percent to 70 percent. With the exception of three months in 1987, the order's diversion limits have been revised temporarily since May 1986. Most recently, the order's diversion limitation percentages were revised from 50 to 65 percent for the months of April through August 1988, and from 40 to 60 percent for the months of September 1988 through March 1989.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of April through August 1989, the percentage of allowable diversions be increased 20 percentage points.

The cooperative states that the percentage of producer milk used in Class II and Class III under the Nebraska-Western Iowa order was approximately 70 percent during the months of April through August 1988, and it expects that percentage to be approximately the same for the same months of 1989. NFO states that keeping the order's diversion allowance at a level approximately equal to the marketwide Class II and Class III useage is quite appropriate.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's 50-percent diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of it's members milk is not needed at pool plants. In order to qualify for pooling, some of the cooperative's members' milk be unleaded at a pool plant, then reloaded and shipped to a nonpool plant to be used. NFO states that such uneconomic milk shipments will be necessary for the months of April through August 1989 if the milk of its members producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the proposed temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of April through August 1989 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Signed at Washington, DC, on: March 16, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–6622 Filed 3–20–89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Certain Administrative Procedures; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule; correction.

SUMMARY: A document was published in the Federal Register (54 FR 8208) on February 27, 1989, proposing changes to Part 177, Customs Regulations. This document corrects an error that appears in that document.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Commercial Rulings Division (202) 566–5868.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register (54 FR 8208) on February 27, 1989, proposed changes to Part 177, Customs Regulations (19 CFR Part 177). The document proposed new procedures to promote nationwide uniformity and a new district rulings program. It also proposed: a procedure under which the effective date of a Customs ruling can be delayed; a clarification of the obligations of a recipient of a tariff classification ruling letter; a clarification of the extent to which previously-issued rulings can be the subject of a request for internal advice; and the removal of the "clearly wrong" test as the standard by which Customs determines whether certain established and uniform practices should be changed.

The words "The rulings issued by the Customs Service under Part 177 of" were inadvertently omitted from the document in the background section under the subheading "Delaying the Effective Date." The omission of the words resulted in an inaccurate statement. This document corrects that error.

Correction

On page 8210 of the document, under the subheading "Delaying the Effective Date" in the third column, the first sentence of the second paragraph should read as follows:

The rulings issued by the Customs Service under Part 177 of the Customs Regulations (19 CFR Part 177) are generally effective on the date they are issued.

March 15, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89–6543 Filed 3–20–89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 110

Public Hearing on NPRM for Vaccine Information Materials

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of public hearing on proposed rule, Vaccine Information Materials.

SUMMARY: On March 3, 1989, the Centers for Disease Control published in the Federal Register (54 FR 9180) a proposed rule for the development and distribution of vaccine information materials as required under Title XXI, section 2126 of the Public Health Service Act. The proposed rule includes a preamble and three proposed vaccine information pamphlets as appendices: Appendix A(1) Diphtheria, Tetanus, and Pertussis; Appendix A(2) Measles, Mumps, and Rubella; and Appendix A(3) Poliomyelitis. The preamble to the proposed rule indicated that plans for a public hearing would be announced. This notice provides specific information on the public hearing relating to the proposed rule.

Dates, Time, and Location: The public hearing will be held on Monday, April 17, 1989, 8:00 a.m. to 4:30 p.m., in Auditorium A, 1600 Clifton Road, NE., Centers for Disease Control, Atlanta, Georgia.

ADDRESS: Persons who wish to make an oral presentation should submit a written request to Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Requests should contain the name, address, telephone number, any business or professional affiliation of the person desiring to make an oral statement, the amount of time requested, and a brief summary statement referencing the appropriate Appendix.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Mailstop E05, Atlanta, Georgia 30333, telephone (404) 639–1880.

SUPPLEMENTARY INFORMATION: The public hearing will be structured to receive specific comments on the content, format, comprehensibility, readability, and length of each Appendix. The schedule will be as follows:

8:10 a.m.–10:10 a.m. Introductory Remarks by Alan R. Hinman, M.D., Director, Center for Prevention Services, CDC, Coordinator, National Vaccine Program, PHS.

8:10 a.m.–10:10 a.m. Oral Statements—Appendix A(1): Diphtheria, Tetanus, and Pertussis (DTP).

10:10 a.m.–10:30 a.m. Break.

10:30 a.m.–12:30 a.m. Oral Statements—Appendix A(2):

Measles, Mumps, and Rubella (MMR).

12:30 p.m.–1:00 p.m. Lunch.

1:00 p.m.–3:00 p.m. Oral Statements—Appendix A(3): Poliomyelitis (Polio).

3:00 p.m.–3:15 p.m. Break.

3:15 p.m.–4:30 p.m. General Discussion.

4:30 p.m. Hearing Ends.

Requests for presentation should be submitted to CDC (Dr. Orenstein) so that receipt is assured on or before close of business April 5, 1989. Oral statements are limited to 10 minutes per Appendix. Groups having similar interests are requested to combine their comments and present them through a single representative. CDC will assign times to persons who properly file a request for presentation in the order of receipt of the requests. Depending on the number of presenters, the allocation of time for each Appendix may be adjusted to accommodate the level of expressed interest and the 10-minute limit for presentations may likewise be shortened if necessary.

CDC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up outside the auditorium door before 10:00 a.m. on April 17, 1989. These persons will be allocated time during the oral statements period or during the General Discussion Session, respectively, as time permits. Additional comments by persons who previously gave a statement will also be heard during the General Discussion Session. Presentation schedules will be available to all attendees on the day of the hearing. The hearing is open to the public, with attendance limited only by space available. Presenters may be accompanied by a reasonable number of persons, space permitting.

The proceedings of the hearing will be transcribed. Full written text of oral statements may be entered into the administrative record of the hearing by submission to CDC: 1) In conjunction with the request for presentation, 2) during the hearing, or 3) after the hearing so that receipt is assured by close of business June 2, 1989. Written submissions should not exceed 20 double-spaced typed pages. Written statements that are properly submitted by persons unable to attend the hearing will be entered into the administrative record of the hearing. No portion of the administrative record will be held in confidence. Requests for copies of the record should be submitted in writing to Dr. Orenstein.

Dated: March 16, 1989.

Glenda S. Cowart,

Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89–6661 Filed 3–20–89; 8:45 am]

BILLING CODE 4160–18–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 88–281; FCC 89–37]

Amendment of the Commission's Rules To Require Advisory Labeling of Radio Communications Receivers in Light of the Electronic Communications Privacy Act of 1986; Termination

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; termination.

SUMMARY: This action terminates this proceeding without adopting an advisory labeling requirement for radio receivers. This proceeding was initiated to determine if an advisory labeling requirement for radio receivers is necessary to foster compliance with the Electronic Communications Privacy Act of 1986.

The purpose of this section is to permit flexible uses of conventional mobile frequencies so that implementation of new common carrier services resulting from technological advances need not be delayed.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Marrangoni, telephone (202) 653–8107.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in General Docket 88–281, adopted February 1, 1989 and released March 3, 1989. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In the *Notice of Proposed Rule Making (Notice)* in General Docket 88–281, adopted May 27, 1988, FCC 88–185 (53 FR 26092; July 11, 1988), the Commission proposed to amend Part 15 of the rules to require a label on all radio receivers capable of receiving communications protected by the Electronic Communications Privacy Act of 1986 (ECPA). The intent of the proposed label was to alert users to the provisions of the ECPA relating to the interception of "protected communications." The *Notice* asked for comments regarding the need for and contents of such a label.

2. Comments were received from cellular radio telephone and recreational radio monitoring interests, e.g. scanner hobbyist, short wave listeners, etc. The cellular radio telephone interests believe that labeling is an insufficient means for ensuring the intended protections of the ECPA. Some of the cellular interest commenters also that manufacturers should be prohibited from marketing devices capable of receiving communications protected by the ECPA. Some commenters argue that compliance with an advisory labeling requirement may shield manufacturers from liability for violations of the law. Recreational radio monitoring interests agree that some communications should be protected, but disagree with the proposed labeling method. They assert that if labeling requirements for receivers are adopted, transmitters capable of transmitting protected communications should also be labeled to advise users that their conversations may be monitored. These parties also argue that in addition to the label, a clear explanation of the provisions of the ECPA is needed in the owner's manual or elsewhere. Two commenters, one from each interest group, contend that it is premature to consider actions concerning the ECPA, since the law has been in existence for such a short time. They state that there is no evidence to indicate that the ECPA itself is not effective in controlling interception of protected communications such that further regulatory involvement is needed at this time.

3. The possibility of technically "blocking" the reception of frequencies which may carry protected communications also was discussed in the *Notice*. The Commission does not believe that technically blocking frequencies is a desirable approach. As pointed out in the *Notice*, although the ECPA prohibits interception of certain classes of communications, the frequencies on which these communications are transmitted can be used for unprotected transmissions as well. In addition the ECPA does not prohibit the manufacture and sale of receivers based solely on the ability to receive specific frequencies.

4. With respect to the labeling, the Commission agrees with some of the commenters that, in some instances, a warning label, by calling attention to a prohibited activity, might encourage it. The Commission is also persuaded that given the complexities of the ECPA it is impractical for a single label to provide sufficient information to properly advise users of the legal requirements. The Commission noted from the comments in this proceeding that some manufacturers are voluntarily taking steps to comply with the intent of the ECPA either by informing users of the provisions of the ECPA or by redesigning equipment to omit certain frequencies. In view of the above considerations the Commission believes that regulatory action is not necessary at this time. Therefore, the proposed labeling requirement is not being adopted.

Regulatory Flexibility Final Analysis

5. Pursuant to 5 U.S.C. 601 *et seq.*, the Final Regulatory Flexibility Analysis has been prepared.

I. Need and Purpose of This Action:

The regulations proposed were found to be unnecessary at this time. The record in this proceeding does not sufficiently demonstrate a need for Commission action. Therefore, this proceeding is being terminated.

II. Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis:

No comments were received that specifically addressed the Initial Regulatory Flexibility Analysis. No changes to the regulations are being adopted and there is no impact on the public.

III. Significant Alternatives Considered and Rejected:

The Commission considered all the alternatives in this proceeding and considered all timely filed comments directed to the various issues in the *Notice*. After weighing all aspects of this proceeding, the Commission has adopted the most reasonable course under the mandate of the Communications Act of 1934, as amended.

Paperwork Reduction Act Statement

6. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new information collection requirements.

7. Accordingly, *it is ordered*, that this proceeding is *terminated*.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-6480 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-261, RM-6339]

Radio Broadcasting Services; Altamont, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Western States Broadcasting, dismisses its request for the allotment of Channel 300A to Altamont, Oregon, as the community's second local FM service. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-261, adopted February 15, 1989, and released March 10, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communication Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-6593 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No. 86-112; DA 89-281]

Noncommercial FM Translators

AGENCY: Federal Communications Commission.

ACTION: Order requesting comments.

SUMMARY: A "Joint Proposal for Noncommercial Educational FM Translators" was filed by several parties who had filed reconsideration petitions in this proceeding as a resolution of issues raised in MM Docket No. 86-112 ("Amendment of Part 74 of the Commission's Rules to Provide for Satellite and Terrestrial Microwave Feeds to Noncommercial Educational FM Translators"), FCC 86-125, 53 FR 14802 (April 26, 1988) and in the petitions for reconsideration filed in that docket. The parties request that the Joint Proposal be put out for public comment. Comment on the Joint Proposal must be filed within 20 days of the date of public notice of the proposal in the **Federal Register** as defined by Section 1.4, and replies are due 10 days thereafter.

DATE: Comments due April 3, 1989; replies due April 13, 1989.

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

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTAL INFORMATION: This document contains a summary of the Joint Proposal. The letter of transmittal and the full text of the Joint Proposal are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Joint Proposal

1. The Joint Proposal allows for use of alternative signal delivery to noncommercial educational FM translators which are owned and operated by the licensee of the primary station to be rebroadcast and which comply with a series of conditions summarized below. The parties to the Joint Proposal assert that these conditions are designed to assure continued interference-radio service in the noncommercial FM band and to allow expansion of service through the use of FM translators.

2. The Joint Proposal proposes to amend the modifications of Part 74 of the Commission's rules regarding alternative signal delivery for noncommercial educational FM translators that were adopted in the *Report and Order* (3 FCC Rcd 2196 (1988)) in this proceeding. These proposed amendments relate to: 1) interference protection criteria for new translator facilities; 2) a transition period during which an applicant must show a second available noncommercial frequency unless the applicant meets certain specific conditions; and 3) specific technical guidance for showing

a second available frequency. The parties also request that the Commission not extend alternative signal delivery eligibility to third party owned translators as proposed in the *Further Notice of Proposed Rule Making* (3 FCC Rcd (1988)) in this proceeding during the transition period.

3. This action is taken pursuant to authority found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 74

Radio broadcasting.

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau.

[FR Doc. 89-6594 Filed 3-20-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF AGRICULTURE

48 CFR Part 415

[Agriculture Acquisition Circ. No. 3]

Acquisition Regulation

AGENCY: Office of Operations, Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize the Department of Agriculture (USDA) contracting officers to release, under certain conditions, proposals outside the Government solely for evaluation purposes. The Federal Acquisition Regulation (FAR) 15.413 allows the use of alternate procedures by which proposals may be released to non-Government evaluators, if authorized in implementing agency regulations. The intended effect of this rulemaking is to propose an amendment to the Agriculture Acquisition Regulation (AGAR) to authorize the use of the alternate procedures described in the FAR.

DATE: Comments must be received April 20, 1989.

ADDRESS: Interested parties should submit written comments to: U.S. Department of Agriculture, Office of Operations, Procurement Division, Room 1575-S, Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Larry Schreier, Office of Operations, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-8924.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 15.413-1 provides that after receipt of proposals none of the information contained in them shall be made available to the public. FAR 15.413-2 provides that, when agency regulations authorize the Alternate II procedures in FAR 15.413-2, those procedures may be used, instead of the procedures in FAR 15.413-1.

This proposed rule adopts the alternate procedures in FAR 15.413-2 for USDA. FAR 15.413-2 permits disclosure of proposals outside the Government only to the extent authorized by, and in accordance with, the procedures in FAR 15.413-2(f). This proposed rule also retains the restrictions relating to release of proposal information in FAR 15.413-1, paragraphs (a) and (b), notwithstanding adoption of the procedure in FAR 15.413-2.

The USDA is proposing to adopt these alternate procedures in order to obtain the opinions of outside experts for evaluating proposals which involve a high level of detailed expertise, especially in areas of complex and constantly changing technology, such as ADP and telecommunications resources.

B. Executive Order No. 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring Office of Management and Budget review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The USDA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The rule is intended to permit USDA to implement an authority under the FAR to release proposals outside the Government for evaluation.

List of Subjects in 48 CFR Part 415

Government procurement, Contracting by negotiation.

For the reasons set out in the preamble, Part 415 of Title 48 Code of Federal Regulations is proposed to be amended as follows:

PART 415—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 415 continues to read as follows:

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

2. Section 415.413 is added to read as follows:

415.413 Disclosure and use of information before award.

(a) Contracting officers shall use the Alternate II proposal evaluation procedures in FAR 15.413-2 and this 415.413 for the evaluation of proposals.

(b) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government not having a legitimate interest; except that information in proposals or information concerning the number or identity of offerors may be disclosed outside the Government for evaluation only to the extent authorized by, and in accordance with, the procedures of FAR 15.413-2(f) and this section.

(c) During the preaward or preacceptance period of a negotiated acquisition only the contracting officer, the contracting officer's superiors having contractual authority, and others specifically authorized small transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others. (See FAR 15.610.) However, general information that is not prejudicial to others may be furnished upon request.

(d) The head of a contracting activity may make the decision as provided by FAR 15.413-2(f)(1).

(e) The contracting officer shall submit a written justification to the HCA whenever the release of proposals outside the Government for evaluation purposes is contemplated. Following the approval of the HCA, the contracting officer may, consistent with the provisions of FAR 15.413.2(f) (2) through (5), release proposals to non-Government employees for their evaluation.

(f) The contracting officer shall obtain the following written certification and agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

Certification on the use and disclosure of proposals

REP#_____

Offeror_____

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or on the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the Source Evaluation Board assembled for this acquisition or individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

(Name and Organization)

(Date of Execution)
(End of Certificate)

(g) The release of a proposal outside the Government for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(h) The contracting officer shall attach a cover page bearing the GOVERNMENT NOTICE FOR HANDLING PROPOSALS, as stated in FAR 15.413-2(e), to each proposal upon receipt.

Date: March 13, 1989.

Frank Gearde, Jr.,

Director, Office of Operations.

[FR Doc. 89-6615 Filed 3-20-89; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Changes To Be Proposed in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species, which are listed in the appendices of this treaty. The United States, as a Party to CITES, may propose amendments to the appendices for consideration by the other Parties.

This notice invites comments and information from the public on species that have been identified as candidates for U.S. proposals to amend Appendix I or II at the next biennial meeting of Party nations. The meeting is scheduled for October 9-20, 1989, in Lausanne, Switzerland.

DATE: The Service will consider all comments received by April 20, 1989 on proposals described in this notice.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Department of the Interior; Washington, DC 20240. Background materials will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane at the address given above, or telephone (703) 358-1708.

SUPPLEMENTARY INFORMATION: In its previous notice on this subject (53 FR 35530, September 14, 1988) the U.S. Fish and Wildlife Service (Service) requested information on plant or animal species that might lead the Service to prepare amendment to listings under CITES for consideration at the next regular meeting of the Conference of the Parties. That notice described the provisions of CITES for listing species in the appendices and set forth information requirements for proposals. The present notice responds to comments and information received.

The Peregrine Fund Inc. proposed transferring the peregrine falcon (*Falco peregrinus*) from Appendix I to Appendix II, and the North American Falconers Association proposed removing the *tundrius* race of the peregrine falcon from Appendix I. However, two North American subspecies and a European subspecies (*Falco peregrinus peregrinus*) are still on the U.S. List of Endangered and Treatened Wildlife. *Falco peregrinus tundrius* is listed as threatened. The Service acknowledges the efforts of The Peregrine Fund and falconers in restoring peregrine populations in the United States. Although the status of these taxa has improved in recent years, there are no imminent plans to change the listing of these subspecies. For this reason and as well as concern for the similiarity of appearance with other subspecies, the Service does not intend to submit an amendment on the peregrine falcon to the Secretariat.

The Peregrine Fund and the North American Raptor Breeders Association proposed transferring the gyrfalcon (*Falco rusticolus*) from Appendix I to Appendix II, and the North American Falconers Association suggested that this species be removed from Appendix I. At the fifth meeting of the Conference of the Parties the United States voted against transferring the North American population of this species to Appendix I based on the population status information available. Nevertheless, the Parties adopte the amendment apparently in large part because of concern about illegal trade in specimens from this population and some concern about similiarity of appearance to specimens from the European populations which were listed on Appendix I. We have not sought recent information as to the status of these latter populations. However, we have consulted CITES officials in Canada, inasmuch as this country has primary interest in the protection as well as legitimate trade in this species. Canadian authorities are planning to implement procedures to address the enforcement concerns especially through identification of specimens from Canada. However, they are concerned about submitting an amendment until these procedures are fully implemented and can satisfy the other Parties. Consequently, Canadian authorities are not planning to submit an amendment on this species until the meeting of the Parties in 1991. Therefore, in deference to their position, we do not intend to submit an amendment on the gyrfalcon at this next Conference of the Parties.

The following additional proposals were received and will be considered for possible submission as proposed amendments to CITES's Appendices. The Service seeks additional comments and information to assist it in deciding whether to submit these amendments.

1. African elephant (*Loxodonta africana*)

The Committee for Humane Legislation proposed transferring the African elephant from Appendix II to Appendix I. The Service recognizes the significant decline in the African elephant populations and the threat posed by continued poaching and illegal trade in elephant tusks and ivory pieces. Where these activities can be clearly documented, bans on imports are being established under the African Elephant Conservation Act. In the February 3, 1989, **Federal Register** (54 FR 5553) information is sought as to the ability of ivory-producing countries to control poaching and properly manage their native elephant populations. Presently, the Service understands that there are 750,000 elephants and that there may be several viable elephant populations. Furthermore, the Service recognizes the potential economic benefit to those

countries that are able to properly manage their elephant populations. Consequently, the Service, if it submits an amendment, may consider an amendment that addresses certain countries or geographical areas or an amendment that applies to all countries. Any information received in response to either the February 3, 1989, Federal Register (54 FR 5553) notice or the present notice will be considered by the Service in deciding to submit an amendment on the elephant to the Secretariat for consideration at the meeting of the Parties this fall.

2. Flying Foxes (*Pteropus* spp.)

The Service has received a proposal to transfer all 14 taxa of flying foxes currently listed in Apprndix II to Appendix I and to add the remaining 48 species in the genus to Appendix II.

Flying foxes have long been an important source of food to traditional subsistence communities of the Pacific archipelagos of Micronesia and Polynesia and continue to be consumed in great quantities as a delicacy in more modern communities, especially on Guam. According to the proposal received, over 12,000 flying foxes from Palau, Truk, Pohnpei, Western Samoa, and the Philippines were imported to Guan in 1988, whereas over 50,000 were requested for import. Palau, Truk, and Pohnpei are currently the biggest suppliers.

Available data on the status of flying fox species of western Pacific archipelagos indicate population declines due to commercial exploitation for food for the following species: *Pteropus mariannus* ssp. in the Northern Mariana Islands; *P. tonganus* on American Samoa; *P. samoensis* on American and Western Samoa. Available data for *P. insularis, P. molossinus* and *P. phaeocephalus* are insufficient to indicate a population decline, but large numbers have been supplied to the Guam market from the islands where these species occur. *Pteropus tokudae* of Guam has not been seen since 1968. *P. pilosus* was described from two specimens caught in Palau during the 19th century. Both may be extinct.

The taxonomic status of the genus is unclear, but the taxonomy here follows that of the proposal, which in turn is based on a manuscript, "Order of Bats, Chiroptera Blumenbach, 1779" recently submitted by K.F. Koopman for *Handbuch der Zoologie*, Vol. 8, *Mammalia. Pteropus mariannus* is considered to have seven subspecies (*Pteropus mariannus mariannus, P. m. loochoensis, P. m. paganensis, P. m. pelewensis, P. m. ualanus, P. m. ulithiensis, P. m. yapensis*). Although flying foxes vary considerably in size, many species are quite similar in appearance and therefore difficult to distinguish from one another.

Due to the documented decline of several subspecies of *Pteropus mariannus*, it has been proposed that all seven subspecies be added to Appendix I. The proposal cites population declines of *P. samoensis* and its limited distribution as sufficient to propose it for inclusion in Appendix I. Population declines for *P. insularis* on Truk and *P. molossinus* and *P. phaeocephalus* in the eastern Caroline Islands are less-well documented. However, because of number of these species in trade and their extremely limited distribution we are seeking additional information that would support an Appendix I proposal. Although perhaps extinct, *P. tokudae* and *pilosus* nontheless have been proposed for listing in Appendix I until such time as their status is definitely resolved. Finally, *P. tongangus* has been proposed for listing because at least one subspecies, *P. t. tongaus*, has been seriously reduced in numbers and because it is similar in appearance to the two less-threatened subspecies which are heavily traded.

The Service is considering the proposal to include the remaining 48 species of *Pteropus* in Appendix II because many are involved in international trade and because of the difficulty in distinguishing species from each other. However, the proposal contained few data indicating the magnitude of international trade of these other species, or indicating that natural populations have declined because of harvest for international trade. The Service is especially interested in obtaining specific information on trade in and population status of any of these 48 species, especially those occurring in the Philippines, New Guinea, Indonesia and Thailand. Any proposal would continue the present listing restriction by including only dead bats because the trade of concern is only of dead specimens and the regulation of the extremely limited trade in live specimens for zoological gardens would be unnecessarily complicated because of the difficulty in distinguishing species.

3. Pachypodium (3 *Pachypodium* spp.) and Succulent Euphorbia (10 *Euphorbia* spp.)

The Natural Resources Defense Council has provided partial information that suggests the following 3 Madagascan species of *Pachypodium* (Apocynaceae) and 10 geophytic (usually tuberous) species of succulent *Euphorbia* (Euphorbiaceae) should be uplisted from Appendix II to Appendix I. Concern for some of these species also was discussed and agreed to at the CITES Plants Committee meeting in November 1988. The species are: *P. baronii, P. brevicaule, P. decaryi*, and *E. ambovombensis, E. cap-saintemariensis, E. cylindrifolia, E. decaryi, E. francoisii, E. moratii, E. parvicyathophora, E. primulifolia, E. quartziticola*, and *E. tulearensis*. Reasons for the possible uplisting are: (1) continuing international hobby interest in wild specimens; (2) possibly significant export of some of these species from Madagascar; (3) the vulnerability of these species to such trade because of their biological characteristics (e.g., slow-growing or difficulty in propagating artificially), limited distributions (some have presumably lost range from collectors; some species are not well known), and/or localized occurrence in diminishing habitats, as well as the similar appearance of species in this group of geophytic *Euphorbia*. The Service particularly seeks information on their rarity and likelihood of overcollecting.

4. Snowdrops (*Galanthus* spp. and hybrids)

The Natural Resources Defense Council also requested listing of the genus *Galanthus* of the Liliaceae (Amaryllidaceae), consisting of about 12–14 species in Europe and the Middle East, with possibly *G. fosteri, G. gracilis, G. latifolius* and *G. rizehensis* recommended for Appendix I, and the remainder of the genus for Appendix II in order to regulate trade in other species that are declining at least in some areas, such as *G. elwesii*, and because of similarity in appearance of species and hybrids. All species of the genus are in accelerating demand for ornamental use, and most specimens are believed to be collected from the wild, especially in Turkey. Some common species as well as the rare species are declining in all or portions of their native habitats, with collecting expanding into previously less exploited areas. The need for listing the genus in Appendix II was presented to and accepted by the Plants Committee. A draft proposal for all species and hybrids is in preparation, and materials are on file. The Service is interested in information on: rarity of these species throughout their ranges in the wild, specimens collected only from naturalized populations (e.g., perhaps in portions of France), international trade records for individual species, the extent of such trade in artificially propagated specimens, and taxonomic information

as to which species are correctly recognized.

5. Cycads

The Cycad Specialist Group of the Species Survival Commission of the IUCN presented information accepted by the Plants Commitee to uplist a new Colombian genus, *Chigua* (Zamiaceae), from Appendix II to Appendix I. The reasons for possible uplisting are the vulnerability of the species and the interest of hobbyists to obtain the new genus, which is not yet readily available from artificially propagated sources. The Deputy Chairman of the Cycad Group, who is at the New York Botanical Garden, presented the above information and is preparing the draft proposal.

6. Palms (18 *Chamaedorea* spp.)

The Palm Specialist Group of the Species Survival Commission of the IUCN presented information to the Plants Committee indicating that 11 species of palms in the genus *Chamaedorea* (Palmae or Arecaceae) particularly from Mexico warrant listing in Appendix I, or some species in Appendix II. Subsequently, information has been presented by the Deputy Chairman of the Palm Group on seven more species. The 13 species proposed for Appendix I are *C. cataractarum, C. ferruginea, C. glaucifolia, C. klotzschiana, C. metallica, C. montana, C. oreophila, C. radicalis, C. seifrizii, C. stolonifera,* and *C. tenella,* all endemic to Mexico, as well as *C. amabilis,* endemic to Costa Rica, and *C. pulchra,* endemic to Guatemala. In addition, the following five species in the genus are recommended for Appendix II: *C. ernesti-augusti* from Belize, Guatemala, Honduras, and Mexico; and *C. elegans* (wild populations only, artifically propagated specimens to be excluded), *C. rojasiana, C. simplex,* and *C. tuerkheimii* from Guatemala and Mexico. The reasons for the possible listings are the vulnerability of the species and the international trade in them that has been evaluated through work funded by the World Wildlife Fund-U.S. as well as the U.S. Agency for International Development. The Deputy Chairman of the Palm Group who prepared the WWF report, is preparing the draft proposal. The Service is interested in information on the rarity and international trade in these species, as well as any taxonomic information as to whether these species are correctly recognized.

The Chairman of the Palm Group, who is undertaking a special study on the threatened palms of Madagascar, also presented information (accepted by the Plants Committee) that the following three Madagascan palms require maximum protection under CITES. *Neodypsis decaryi,* known from 30 trees in one population, is proposed for uplisting from Appendix II to Appendix I, and the very local and newly described species *Marojejya darianii* and *Voanioala gerardii* are proposed for listing in Appendix I, as virtually all their seeds are being collected for the horticultural export market. The Chairman of the Palm Group is preparing the draft proposal. The Service is particularly interested in information on the rarity and international trade in these species, and seed production from artificially propagated specimens (seeds from trees grown by people outside Madagascar or under controlled conditions outside their native ranges in Madagascar).

7. Artificially propagated Appendix I hybrids

Resolution Conf. 6.19 (adopted at the July 1987 6th meeting of the Conference of the Parties) is not in effect for artificially propagated hybrids of Appendix I species until a proposal has been accepted by the Parties that determines which if any species should be annotated, so that such hybrids are regulated as the species, while unannotated species would have such hybrids regulated as Appendix II species. Until such time, all such hybrids are treated as if the species were annotated (see Doc. 6.32). The United States and the Netherlands are preparing the proposal, which may recommend that no species currently in Appendix I should be annotated. The Service is particularly interested in information that suggests any species now in Appendix I should be annotated for the reasons indicated in Doc. 6.32 or other specified reasons.

8. Red-eared slider (*Trachemys scripta elegans*)

The International Wildlife Coalition (IWC) has proposed that the red-eared slider (*Trachemys scripta elegans*) be included in Appendix II of CITES. This turtle formerly was sold in vast numbers in pet and department stores in the United States. In 1975, the Food and Drug Administration banned domestic sales of turtles under a carapace length of four inches because of outbreaks of *Salmonella* infection caused by keeping these turtles as pets. However, commercially-reared hatchling turtles continue to be exported to at least 30 countries for the pet trade, and, apparently, to a lesser extent for food.

Despite a considerable decline in commercial farming since 1975, Service records indicate that two to three million commercially reared hatchlings are exported annually. However, according to the proposal, the turtle farm industry estimates annual exports of four to seven million.

The proposal from IWC indicates that at least 100,000 adults, with an emphasis on females, are removed from the wild annually to replenish overwinter losses of breeding stock on commercial farms. This estimate is apparently derived from a 1986 survey of four farms, with an extrapolation based on the estimated number of farms in operation. A 1988 survey of an unspecified number of farms apparently verifies the earlier estimates.

The IWC proposal also indicates that a substantial number of wild-caught adults are exported to Asian countries for food. One source indicated that 20,000–30,000 turtles per week are captured and exported during the peak of the turtle harvest season, which runs from approximately April through November. Assuming a 5-month season and 20,000 exported per week, one derives a conservative estimate of 400,000 turtles exported annually for food. The actual number may be as high as 750,000.

The red-eared slider has an extensive distribution within the United States. With western limits of the Pecos River in New Mexico, the panhandle of Oklahoma, and western Kansas, it occurs throughout Texas and the southern states as far east as the Florida panhandle, Alabama, and central Tennessee. To the north the species occurs in most of Missouri, Illinois, and western Indiana.

Little information is available on the size of natural populations, but the species is reported to be common throughout most of its range. Limited survey data and anecdotal evidence indicate that populations have probably declined throughout much of Louisiana.

Considerable support for this proposal has been received from environmental and humane groups and several individuals, including professional herpetologists. Although data are limited, submitted comments suggest that populations of this subspecies, at least locally, are threatened by harvest for international trade.

The Service is considering a proposal to place the red-eared slider on Appendix II because there is substantial international trade in this subspecies, and because continued and possible expansion of trade may ultimately threaten it in a significant portion of its range. The Service is especially interested in obtaining specific

information on any documented population declines due to harvest, on the number of commercial farms in operation, on the actual amount of take from the wild for replenishment of breeding stocks and for commercial food export, and on the location of the commercial food harvest.

9. Northern Pacific Fur Seal (*Callorhinus ursinus*)

The U.S. National Marine Fisheries Service proposes that this species be included on Appendix II of CITES. This fur seal was commercially harvested in the North Pacific under the auspices of a series of International Treaties from 1911 to 1984. The Interim Convention on Conservation of North Pacific Fur Seals of 1957 expired in 1984 and the resulting lack of regulations on the international trade in this species constitutes a continuing threat to its declining population.

Since the early 1940's and 1950's, the population of about 3 million fur seals has declined to 1.1 million. This species occurs in the North Pacific Ocean from 35°N to 60°N latitude. The breeding population in the United States is centered on the Pribilof Islands and constitutes 75 percent of the world population. This population has declined from 2.2 million in the 1950's to a current estimate of 800,000. The last commercial harvest in the United States occurred in 1984. The Soviet Union has similarly stopped its harvest in the western Pacific. Nevertheless, there is the concern that animals taken incidental to commercial fishing can readily enter into international trade. Furs and other by-products have been marketed in Europe and Asia.

Many studies and analyses of historical data have been made to ascertain the causes of a precipitous population decline on the Pribilof Islands. Entanglement in discarded fishing gear has been identified as a significant cause of mortality, though not identified as a singular cause of the population decline. Mortality due to entanglement in active fishing gear is a serious consideration due to the existence of a multinational high seas drift gillnet fishery, which operates transpacific and well within the pelagic distribution of this seal.

Fur seals of the genus *Arctocephalus* are harvested in the southern hemisphere and are actively traded internationally. Seals of this genus are already on Appendix II of CITES. Processed products of *Callorhinus* and *Arctocephalus* present a serious similarity of appearance problem.

10. Northern elephant seal (*Mirounga angustirostris*)

The U.S. National Marine Fisheries Service has recommended that this species be proposed for removal from Appendix II. The southern elephant seal (*M. leonina*) is also listed in Appendix II. There is no known international trade in either species. In 1985, the CITES Management Authority for Argentina suggested postponing its delisting for several years because of uncertainty about whether harvesting of the southern elephant seal might resume (exploitation ceased in 1961). Mexico, which harbors a major population of northern elephant seals, is not a Party to CITES, but has protected this species. Uncontrolled harvest in the United States is prohibited under the Marine Mammal Protection Act. The prohibitions against harvesting both species of elephant seals have been in effect for many years and the Parties have recorded no trade in either species since CITES entered into force. Inclusion of the northern elephant seal in Appendix II has no relation to the ongoing monitoring of its population status or to the effective protection status conferred on this species by the Mexican and U.S. Governments. There is no indication that exploitation of southern elephant seals will resume; if that were to happen, and if it became necessary to include the northern species because of similarity in appearance, it is always possible to place the latter species again on Appendix II.

11. Cycad Seeds

The Cycad Specialist Group of the Species Survival Commission presented information to the CITES Plants Committee that seeds of Appendix II cycads (Cycadaceae and Zamiaceae) should be delisted. This conclusion was accepted by the Committee, which also noted that such a change would conform with lack of regulation of seeds of other Appendix II species. The reasons for possible delisting are: (1) overcollecting of wild seeds of rare species does not seem to be occurring, perhaps because artificially propagated specimens are so readily available; (2) some species produce relatively large numbers of seeds, and trade in their wild seeds is unnecessarily encumbered; (3) regulating the seeds as the whole plants provides no incentive to collect seeds rather than whole specimens, and to maintain the wild population as a seed source; and (4) the majority of the trade, which is in seeds of artificially propagated plants, is unnecessarily encumbered. The Deputy Chairman of the Cycad Group, who is at the New York Botanical Garden, presented the above information. The Service is particularly interested in information suggesting that the seeds should remain regulated.

12. 10-Year Review Actions

The following nine plant species have been listed since 1973; seven of them are proposed for delisting and 2 for downlisting as part of the on-going review of plant species initiated with the 10-year review called for in resolution Conf. 3.20. The five species in Appendix I proposed for delisting and the reasons are: *Alocasia zebrina* (Araceae), more common than thought, readily available as artificially propagated specimens and without an international demand in wild specimens; *Caryocar costaricense* (Caryocaraceae), more common than thought and not in international demand; *Prepusa hookeriana* (Gentianaceae), not in international demand; *Lavoisiera itambana* (Melastomataceae), not in international demand; and *Guarea longipetiola* (Meliaceae), a synonym of a more common species. The two species of palms (Palmae or Arecaceae) in Appendix II proposed for delisting because they are not in international trade are *Phoenix hanceana* var. *philippinensis* and *Salacca clemensiana*. The two Appendix I species proposed for downlisting to Appendix II because they are more common and less in international demand than thought are *Tachigalia versicolor* (Leguminosae or Fabaceae) and *Welwitschia mirabilis* (Welwitschiaceae). The Service is particularly interested in any information suggesting that any of these species should be treated differently than proposed above.

Comments on bred-in-capitivity requirements were received and will be considered in development of U.S. criteria for registration of facilities that may seek certification of their stock as "bred-in-captivity."

However, no request was received to submit a species for acceptance by the Parties as being bred-in-captivity in accordance with resolution Conf. 6.21.

Future Actions

The Service plans to publish a further **Federal Register** notice to announce its decisions on the species proposals discused above. The U.S. proposals must be submitted to the CITES Secretariat by May 12, 1989, for consideration at the next regular meeting of the Conference of the Parties. Persons having current biological or

trade information about these species are invited to contact the Service's Office of Scientific Authority at the above address.

This notice was prepared by Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: March 9, 1989.

Becky Norton Dunlop,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-6600 Filed 3-20-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 54, No. 53
Tuesday, March 21, 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

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (pub. L. No. 92–463), notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: April 13, 1989.

Place: Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia 22311.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) An orientation for new members; (2) status of grain quality issues, such as wheat classification, wheat dockage and foreign material study, Cu-sum, aflatoxin, and sorghum; (3) grain study by the Office of Technology Assessment; (4) sunflower seed oil calibration; (5) pending State legislation; and (6) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting should contact W. Kird Miller, Administrator, FGIS, U.S. Department of Agriculture, P.O. 96454, Washington, DC 20090–6454, telephone (202) 1382–0219.

Dated: March 15, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–6625 Filed 3–20–89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Frosty Creek Study Area—Cleveland Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to permit the development of a timber sale(s) in the Frosty Creek drainage on the Wrangell Ranger District, Strikine Area, Tongass National Forest, Alaska.

DATE: Comments concerning the scope of the analysis should be received by April 20, 1989.

ADDRESS: Written comments and suggestions concerning the scope of the analysis should be sent to Richard K. Kohrt, District Ranger, Wrangell Ranger District, P.O. Box 51, Wrangell, Alaska 99929.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Richard K. Kohrt, District Ranger or Donald L. Carpenter, Supervisory Forester, Wrangell Ranger District, P.O. Box 51, Wrangell, Alaska, 99929, phone 907–874–2323.

SUPPLEMENTARY INFORMATION: The Forest Service will prepare an environmental impact statement (EIS) which will refine management direction, as defined in the Tongass Land Management Plan (TLMP), for a portion of the Deer Island Management Area (#S33), on the Wrangell Ranger District, Tongass National Forest. The EIS will cover the Frosty Value Comparison Unit (#524) located on the Cleveland Peninsula. A Value Comparison Unit is the smallest subdivision used for analysis in the Tongass Land Management Plan.

The Tongass Land Management Plan allocated the Frosty Study Area to land use designation (LUD) IV, which provides for the intensive resource use and development where emphasis is primarily on commodity or market resources. This area is presently unroaded.

Analysis on the area conducted in 1984 resulted in an Environmental Assessment and Decision Notices for the Cleveland Timber Sale and a Log Transfer Facility for Frosty Bay VCU. Neither project was implemented. The Decision Notices were subsequently withdrawn and the decision was made to prepare an EIS.

The analysis will consider several timber management alternatives consistent with the current land use designation as prescribed by the Tongass Land Management Plan. It will determine the general practicality of a proposed timber sale(s) considering the resource characteristics, related economic factors, and issues and concerns. It will identify other resource management opportunities. Public issues and concerns will be re-examined to see if they have changed or new issues have arisen since the EA was prepared. Changes in the existing land use designation will not be considered at this time.

Scoping was conducted with respect to the earlier environmental documents completed in 1984. Federal, state, and local agencies along with other individuals or organizations who have been or may be interested in, or affected by, any decision as a result of this EIS are invited to participate in the scoping process.

The draft EIS should be available for public review by June 1989. The final EIS is scheduled for completion by September 1989.

Date: March 10, 1989.

Ronald R. Humphrey,

Forest Supervisor.

[FR Doc. 89–6629 Filed 3–20–89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held April 12, 1989, 1:00 p.m. Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers of Comments by the Public.
3. Discussion of Vector Processing.
4. Update on the Office of Foreign Availability PC–AT Compatible Findings.
5. Discussion on Simplification of ECCN 1565.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittees thereof, dealing with the classified 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 thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Betty Anne Ferrell at (202) 377–2583.

Date: March 16, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–6578 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held April 13, 1989, 2:00 p.m. in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Reports of the Subcommittees.
4. Update on Activity of the TAC Coordination Team.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Betty Anne Ferrell on 202/377–2583.

Date: March 16, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–6580 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee, will be held April 13, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street & Constitution Avenue NW., Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion on Special Licenses for the People's Republic of China.
4. Update on BXA Form 6031P.
5. Discussion of Custom Practices on Export Clearances. The entire 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.

For further information or copies of the minutes, call Betty A. Ferrell at 202/377–2583.

Dated: March 16, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–6579 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–DT–M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held April 12, 1989, 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

Open Session

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of Technical Data Regulations:

a. Update on the Redraft of Part 779.

b. Transferring Technical Controls into the Commodity Control List.

c. Removal of U.S. Unilateral Controls on Technical Data.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. For further information or copies of the minutes please call Betty Anne Ferrell on 202/377–2583.

Date: March 16, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–6577 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Jeffrey Shapiro from an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal.

On February 15, 1989, W. Richard Smith, Jr., Esq., on behalf of Jeffrey Shapiro (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (Act), 16 U.S.C. 1451 *et seq.*, and the Act's pertinent implementing regulations, 15 CFR Part 930, Subpart H. The appeal arises from an objection by the Connecticut Department of Environmental Protection (State) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit to expand Cedar Island Marina in Clinton, Connecticut. The State's objection precludes the Corps from issuing the permit unless the Secretary of Commerce overrides the objection.

If Appellant perfects the appeal by filing a brief and supporting data and information, the Department of Commerce will solicit public comments on the issues raised by the appeal by notices in the **Federal Register** and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Stephanie S. Campbell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

Date: March 13, 1989.

B. Kent Burton,

Assistant Secretary for Oceans and Atmosphere.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

[FR Doc. 89–6555 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–08–M

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

On April 3–5, 1989, the Caribbean Fishery Management Council, and the Council's Administrative and Grievance Committees, will hold public and closed meetings.

On April 4 the Caribbean Council will hold its 66th regular public meeting from 9 a.m. to 5 p.m., at the Hotel Pierre, De Diego Avenue, Santurce, PR, to discuss the draft Queen Conch FMP, and the option paper for the first amendment to the Shallow-water Reef Fish FMP, among other topics. The Council will reconvene on April 5 at 9 a.m., and adjourn at noon.

On April 3 from 2 p.m. to 5 p.m., the Caribbean Council's Administrative Committee will discuss the final rule for 50 CFR Parts 600, 601, 604, and 605, and other Council administrative matters. The Committee will meet at the Council's office, at the address below.

On April 3 from 5:30 p.m. to 6 p.m., in a meeting not open to the public, the Caribbean Council's Grievance Committee will discuss matters applicable to section 302(j)(3)(a) of the Magnuson Fishery Conservation and Management Act. The meeting also will be held at the Council's office.

For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918–2577; (809) 766–5926.

Date: March 15, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–6564 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico and South Atlantic Fishery Management Councils Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Two public meetings related to the fishery management activities of the Gulf of Mexico and the South Atlantic Fishery Management Councils will be held on April 17, 18 and 19, 1989, at the Howard Johnson Plaza Hotel, 700 N. Westshore Boulevard, Tampa, FL.

The Gulf of Mexico and the South Atlantic Fishery Management Councils' Scientific and Statistical Committees (SSCs) will meet jointly from 1 p.m. to 5 p.m., on April 17. The SSCs will review the stock assessment for swordfish and mackerel, recommend a total allowable catch for Gulf and Atlantic groups of king and Spanish mackerel, and review options for Amendment #5 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. The meeting will reconvene at 8 a.m. on April 18 and adjourn at 5 p.m.

The Gulf of Mexico Fishery Management Council's Mackerel Advisory Panel will meet on April 19 from 8 a.m. to 5 p.m., to review the stock assessment for mackerel, recommend a total allowable catch for Gulf and Atlantic groups of king and Spanish mackereel, and review options for Amendment #5 to the FMP for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: March 15, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–6565 Filed 3–20–89; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Two public meetings related to the fishery management activities of the Mid-Atlantic Fishery Management Council will be held on April 19 and 20, 1989, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600).

The Mid-Atlantic Fishery Management Council will hold a public fact-finding meeting on April 19 from 10 a.m., to 1 p.m., to gather information from the fishing industry on possible changes to the Mid-Atlantic Council's fishery development policy, particularly as the policy may relate to quantities of mackerel specified for joint ventures and foreign fishing in 1990.

The Mid-Atlantic Council's Squid, Mackerel, and Butterfish Committee will meet on April 20 from 9 a.m. to noon to develop Atlantic mackerel specifications for 1990 (allowable biological catch, initial optimum yield, domestic annual harvest, domestic annual processing, joint venture processing, and total allowable level of foreign fishing).

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: March 14, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–6566 Filed 3–20–89; 8:45 am]

BILLING CODE 3510-22-M

[Docket No. 90371–9071]

Information Relating to Bowhead Whales; U.S. Implementation of Bowhead Whale Strike Quota for 1989

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of information and request for public comment.

SUMMARY: Information is published by NOAA for use in the development of the U.S. position before the International Whaling Commission (IWC) on the aboriginal/subsistence take of bowhead whales and in the domestic allocation of the existing IWC quota for bowhead whales to U.S. natives. By this notice, NOAA is soliciting public comment on the proposed allocation of the IWC bowhead whale catch limit in 1989.

DATE: Comments must be submitted on or before April 20, 1989.

ADDRESS: Written comments may be mailed to the Office of International Affairs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A list of documents reviewed for this action may be obtained on request, and the documents examined during business hours (9:00 a.m. to 5:00 p.m.) at this address.

FOR FURTHER INFORMATION CONTACT: Becky Rootes, (301) 427–2276.

SUPPLEMENTARY INFORMATION: NOAA is responsible for implementation and enforcement of the Marine Mammal Protection Act (16 U.S.C. 1361–1407), the Endangered Species Act (16 U.S.C. 1531–1543) and the Whaling Convention Act (16 U.S.C. 916–91611). In addition, it provides staff support to the U.S. Commissioner to the IWC and to the IWC Interagency Committee. Consistent with these responsibilities, the Agency develops positions for implementation of the aboriginal/subsistence harvest of bowhead whales under Paragraph 13 of the Schedule to the International Convention on the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, T.I.A.S. No. 1849 (entered into force, November 10, 1948). In order provide for review and comment by the public of the data upon which the U.S. positions are based, the following information is provided: (1) The IWC catch level available for the U.S. aboriginal/subsistence bowhead whale harvest for 1988; (2) a summary of available bowhead scientific information including estimates of current population level and annual recruitment rates; (3) a summary of information on the nature and extent of aboriginal/subsistence need; (4) the level of aboriginal/subsistence harvest limits which could be implemented domestically; and (5) notice of the availability of those documents reviewed by NOAA and relied on by the Administrator of NOAA in making his finding on the range of harvest limits. By this notice, NOAA is soliciting public comment on the proposed domestic implementation of the IWC bowhead whale catch limit for 1988.

1. Catch Level

At the 40th Annual Meeting of the IWC, Auckland, New Zealand, May 30-June 3, 1988, the following catch limit was established for aboriginal/subsistence whaling: "the taking of bowhead whales from the Bering-Chukchi-Beaufort Seas stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: * * * For each of the years 1989, 1990, and 1991, the total number of whales landed shall not exceed 41, except that in 1988, 1989 or 1990, any unused strikes up to a maximum of 3 shall be transferred to the following year." (Schedule to the Convention, Paragraph 13(b)(1)(i).

2. Scientific Information

The IWC Scientific Committee agreed at the 1988 IWC meeting on an estimate of 7,800 (with a 95 percent confidence interval of 5,700 to 10,600) as the current size of the bowhead whale population. Based on simulation analysis conducted by scientists at the 1988 IWC meeting, estimates were made of the number of animals that can be removed which will keep the population at its current level. This is known as the replacement yield (RY) which defines the number of whales annually recruited into the population that balances the number of deaths that occur. (RY) values of 43 to 196 animals were estimated for the range of population estimates of 5,700 and 10,600. The view of the IWC Scientific Committee was that estimates of replacement yield would be most appropriate for the population size of 7,800 resulting in a replacement yield of 56 to 192 bowheads.

3. Aboriginal/Subsistence Need

The Department of the Interior (DOI) conducted the last major analysis of the nature and extent of aboriginal/subsistence need for bowhead whales and whaling in 1983 and the IWC adopted this method for quantifying need in 1986. The Department of Interior contracted a new study on the quantification of subsistence and cultural need for bowhead whales in 1987 which was presented at the 1988 meeting. The new study presented the cultural and subsistence need of the nine Alaska Eskimo whaling villages to take 41 landed bowhead whales. This quantification of need used the same method of calculation accepted by the IWC in 1986. This method derives the mean annual number of bowhead whales landed per capita during a specified historical period and multiplies this mean by the current Eskimo population of nine Alaska Eskimo whaling villages. The result of this calculation is the total number of bowhead whales the nine Eskimo whaling villages need to land each year in order to meet their cultural and subsistence need.

When the IWC adopted this method of quantifying need, members of the IWC Aboriginal Subsistence Subcommittee noted that the quantification was based on a large but incomplete series of data on historical bowhead landings. It was also noted that the quantification used an inconsistent data base period. The Department of the Interior Study was initiated to correct these deficiencies. To complete the series of data on historical bowhead whale landings to the extent possible, the study undertook a comprehensive review of available published and unpublished sources of bowhead landings. Remaining gaps are unlikely to be significantly reduced with further searches for historic data on bowhead landings. The data resulting from this study also permitted the use of a consistent historical base period for the calculation of need. In the prior analysis, the base periods varied from 1940 to 1970 and 1950 to 1970. The base period now begins in 1910, the year

following the cessation of commercial whaling in the arctic, and ends in 1969, prior to the period of unusually high bowhead harvests in the unique economic circumstances of the 1970s. Therefore, applying the additional landed bowhead data and the longer base period to the accepted method of quantifying need, results in a current cultural and subsistence need of 41 landed whales.

4. Domestic Harvest Range

The IWC management scheme for aboriginal/subsistence whaling provides (in Schedule paragraph 13(a)(2)): "For stocks below the maximum sustainable yield (MSY) level but above a certain minimum level, aboriginal/subsistence catches shall be permitted so long as they are set at levels which allow whale stocks to move to the MSY level." Given the above stated estimates of 56–192 whales recruited into the population annually, the aboriginal/subsistence catch can be permitted so long as it is set at a level that allows the whale stock to move to the MSY level.

The catch limit for bowhead whales for 1989, established by the IWC, is 44 strikes or 41 landed with up to 3 unused strikes from 1988 available in 1989. The 1988 quota of 35 strikes was not met. Only 29 strikes were used in 1988 which allows 3 strikes to be transferred forward to 1989. The number under consideration for the 1989 catch limit is 47 strikes or 41 landed.

5. Documents Reviewed

A list of the documents reviewed for this action may be obtained on request from the address above. The documents are available for public inspection during the 30-day public comment period at the same address.

Authority: 16 U.S.C. 1361–1407, 1531–43, 916.

Dated: March 15, 1989.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89–6521 Filed 3–20–89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Indonesia

March 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 23, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

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 current sublimits in Group I for Categories 351 and 369–S are being increased by application of swing.

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 24476, published on June 29, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 1989

Commissioner of Customs, Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 24, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on March 23, 1989, the directive of June 24, 1988 is being amended to adjust the sublimits in Group I for Categories 351 and 369–S, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjusted Twelve Month-Limit [1]
351	140,183 dozen
369–S [2]	520,247 kilograms

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

[2] In Category 369–S, only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–6575 Filed 3–20–89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Request for Bilateral Textile Consultations with the Government of the Dominican Republic

March 16, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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 February 28, 1989, the Government of the United States requested consultations with the Government of the Dominican Republic regarding cotton and man-made fiber nightwear and pajamas in Categories 351/651, produced or manufactured in the Dominican Republic.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Dominican Republic, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on February 28, 1989 and extends through

February 27, 1990, at a level of 765,822 dozen.

A summary market statement concerning these categories follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of products included in Categories 351/651, 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.

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.

February, 1989.

MARKET STATEMENT—Dominican Republic

Pajamas and Other Nightwear—(Category 351/651)

Summary and Conclusions

U.S. imports of pajamas and other nightwear (Category 351/651) from the Dominican Republic reached 765,822 dozen during the year ending November 1988, 19 percent above the 645,160 dozen imported a year earlier. During the first eleven months of 1988, imports of Category 351/651 from the Dominican Republic reached 713,952 dozen, 19 percent above the 598,273 dozen imported during the same period of 1987, and ten percent above the total imported in calendar year 1987. The Dominican Republic is the third largest supplier and the largest uncontrolled supplier of pajamas and other nightwear accounting for 13 percent of total imports in 1988.

The U.S. market for pajamas and other nightwear (Category 351/651) is being disrupted by the sharp and substantial increase of imports from the Dominican Republic.

U.S. Production and Market Share

U.S. production of pajamas and other nightwear (Category 351/651) has been on the decline since 1983 falling from 22,836,000 dozen in 1983 to 15,716,000 dozen in 1987, a 31 percent decline. Production in the first half of 1988 was down five percent from the January-June-1987 level.

The domestic manufacturers' share of the pajama and other nightwear market declined from 89 percent in 1983 to 75 percent in 1987. The domestic manufacturers' share of the market fell to 74 percent in the year ending June 1988.

U.S. Imports and Import Penetration

U.S. imports of pajamas and other nightwear (Category 351/651) doubled between 1982 and 1987, increasing from 2,611,000 dozen in 1982 to 5,360,000 dozen in 1987. Imports through the first eleven months of 1988 reached 5,387,000 dozen, 7 percent above the January-November 1987 level.

The ratio of imports to domestic production tripled, increasing from 12 percent in 1982 to 34 percent in 1987. The import to production ratio reached 36 percent in the year ending June 1988.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 351/651 imports from the Dominican Republic during the first eleven months of 1988 entered under TSUSA numbers 381.5220—men's cotton woven pajamas, other than yarn-dyed, valued over 1.50 U.S. dollars per pair, not ornamented; 381.9210—men's and boys' man-made fiber knit pajamas and other nightwear, not ornamented; and 384.8634—women's, girls' and infants' man-made fiber knit pajamas and other nightwear, other than blanket sleepers, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89-6576 Filed 3-20-89; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 USC Appendix, sections 1-15), announcement is made of the following Committee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee.

Date of Meeting: 17 & 18 April 1989.

Time & Place: 0800-1630 hours, U.S. Army Medical Research and Development Command Conference Room, Bldg. 521, Fort Detrick, Frederick, Maryland.

Proposed Agenda: In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1-15 of Appendix, the meeting will be closed to the public from 1200-1400 hours on 18 April for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

COL Harry G. Dangerfield, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21701-5012, (301) 663-7377 will furnish summary minutes, roster of Committee members and substantive program information.

Harry G. Dangerfield,

Colonel, MC, Executive Director of Advisory Committee.

[FR Doc. 89-6524 Filed 3-20-89; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Amendment to Notice of Meeting.

SUMMARY: This document amends the notice of the March 27-28, 1989, meeting of the Proposal Review Committee of the National Advisory Council on Indian Education as published in the **Federal Register** on March 14, 1989, in Volume

54, Number 48, page 10575. The Proposal Review Committee will meet in closed session on April 3–4, 1989.

FOR FURTHER INFORMATION CONTACT: Jo Jo Hunt at (202) 732–1353.

DATE: March 16, 1989. Signed at Washington, DC.

Jo Jo Hunt,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 89–6534 Filed 3–20–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement on Reactor Operation, Savannah River Plant; SC

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) to further the purposes of the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of long-term operation of K-, L-, and P-Reactors at the Savannah River Plant (SRP) to produce defense nuclear materials for the U.S. nuclear weapons program. It is recognized that the EIS is not a precondition to operation of the reactors in the near future. Reasonable alternatives to long-term operation will also be considered. DOE will conduct public scoping meetings on the EIS.

The continued operation of these reactors is based on Congressional initiatives and studies by DOE showing continued operation to be one of the key elements required to assure maintenance of the nuclear weapons stockpile. Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Part 1500–1508), and the DOE NEPA guidelines (52 FR 47662).

Invitation to Comment

To ensure that the full range of issues related to this proposal are addressed, comments on the proposed scope and content of the EIS are invited from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS should be postmarked by May 8, 1989. Comments received after that date will be considered to the extent practicable. Agencies, organizations, and the general public are also invited to present oral comments or suggestions pertinent to preparation of the EIS at the public scoping meetings scheduled as indicated below. Written and oral comments will be given equal weight in the scoping process. Comments and suggestions received during the scoping period will be considered in preparing the draft EIS. Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS.

ADDRESSES: Written comments or suggestions on the scope of the EIS, questions concerning the project, and requests for copies of the draft EIS should be directed to:

Mr. S.R. Wright, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802, (803) 725–3957.

Envelopes should be marked: "Reactor Operation EIS."

For general information on the EIS process, please contact:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600.

DATES: Written comments and suggestions on the proposed scope of the EIS should be postmarked by May 8, 1989, to assure consideration in the preparation of the EIS. Comments received after that date will be considered to the extent practicable.

Background Information

To meet the national defense need for tritium as stated in the Nuclear Weapons Stockpile Memorandum, DOE is proposing to "assure the capability to meet current and projected needs for nuclear materials" by continuing operation of the K-, L-, and P-Reactors at SRP. The need for tritium is becoming more acute due to the continued outage of the SRP Reactors and the natural 5.5 percent per year tritium decay rate. In addition, reactor operation to produce plutonium for national defense purposes may also be required.

Since these reactors were constructed before the enactment of NEPA, original NEPA documentation prior to their operation was not prepared. DOE has prepared a final EIS on L-Reactor Operation (DOE/EIS–0108).

Proposed Action

The proposed action is to continue to operate K-, L-, and P-Reactors at the SRP to produce defense nuclear materials.

Alternatives Proposed For Consideration

The alternatives proposed for consideration in the EIS are:

1. Continue to operate K-, L-, and P-Reactors at SRP well into the future.

2. Terminate K-, L-, and P-Reactors operation consistent with other production options (i.e., the so-called No Action alternative).

3. Other production options to K-, L-, and P-Reactors operation.

Identification of Environmental Issues

The following is an initial list of issues applicable to the operation of the K-, L-, and P-Reactors which will be analyzed in the EIS. The EIS will address the environmental impacts of the proposed action including routine operation and potential accidents during operation of these facilities. In accordance with CEQ NEPA regulations (40 CFR 1500.4 and 1502.21), other environmental documents, as appropriate, may be incorporated by reference, in whole or in part, into these impact analyses. This list is not all-inclusive, nor does it imply any predetermination of potential impacts. Additions or deletions to this list may occur as the result of the scoping process.

1. *Safety and Health Effects*—Radiological and nonradiological impacts of routine operation and potential accidents.

2. *Water Resources*—Qualitative and quantitative effects on water resources and other regional water users.

3. *Air Quality*—Effects of radiological and nonradiological air emissions.

4. *Regulatory Compliance*—Compliance with applicable Federal, state, and local statutes and regulations.

5. *Wildlife and Habitat*—Disturbance or destruction of habitat including floodplains and wetlands and potential effects on threatened or endangered species.

6. *Aquatic Species*—Potential for entrapment or impingement of aquatic organisms on surface water intake structures and impacts to aquatic habitat.

7. *Waste Management*—Environmental effects of the generation, treatment, transport, storage, and disposal of radioactive, hazardous, and solid wastes.

8. *Socioeconomic*—Socioeconomic impacts on affected communities of construction and operation of labor forces and support services.

9. *Cultural Resources*—Potential impacts on historical, archaeological, scientific, or culturally important sites.

10. *Transportation*—Impacts of the transportation of production-related

supplies, materials, equipment, products, and wastes onsite and offsite.

11. *Decommissioning and Decontamination*—Decommissioning and decontamination of existing and new facilities.

Related Documentation

Background information developed regarding past operations of K-, L-, and P-Reactors is available in the public reading rooms listed below. The background information includes the following:

E. I. du Pont de Nemours and Company, 1983. *Safety Analysis of Savannah River Production Reactor Operation*, DPSTSA-100-1, Savannah River Laboratory, Aiken, South Carolina.

DOE, 1984. *Final Environmental Impact Statement, L-Reactor Operation, Savannah River Plant, Aiken, South Carolina*, DOE/EIS-0108, Savannah River Operations Office, Aiken, South Carolina.

National Academy of Sciences/National Academy of Engineering, 1987. *Safety Issues at the Defense Production Reactors*, National Academy Press.

DOE, 1988. *Action Plan for Resolution of Technical Recommendations*, Response to the National Academy of Sciences and National Academy of Engineering.

DOE, 1987. *Final Environmental Impact Statement, Alternative Cooling Water Systems, Savannah River Plant, Aiken, South Carolina*, DOE/EIS-0121, Savannah River Operations Office, Aiken, South Carolina.

DOE, 1987. *Final Environmental Impact Statement, Waste Management Activities for Groundwater Protection, Savannah River Plant, Aiken, South Carolina*, DOE/EIS-0120, Savannah River Operations, Aiken, South Carolina.

Scoping Meetings

In addition to receiving written comments, DOE will conduct public scoping meetings to assist DOE in determining the scope of the EIS and the significant environmental issues to be addressed. Public scoping meetings will be held at the following times and locations:

(1) DeSoto Hilton, 15 East Liberty Street, Savannah, Georgia, Date: April 17, 1989, Time: 9:00 a.m. and 7:00 p.m.

(2) Sheraton Hotel, 2100 Bush River Road at I-70, Columbia, South Carolina, Date: April 20, 1989, Time: 9:00 a.m. and 7:00 p.m.

(3) Odell Weeks Recreation Center, Whiskey Road, Aiken, South Carolina, Date: April 28, 1989, Time: 9:00 a.m. and 7:00 p.m.

The purpose of the scoping meetings is to offer all interested persons the opportunity to voice their opinions on the proposed content and scope of the EIS. DOE will designate a presiding officer to chair each meeting. The meetings will not be conducted as evidentiary hearings, and there will be no questioning of speakers; however, the presiding officer may ask for clarification of statements made to assure that DOE fully understands the comments and suggestions. Individuals may register to speak at the public scoping meetings before or during each session. The presiding officer will establish the order of speakers and provide any additional procedures necessary for conduct of the meeting. To assure that all persons wishing to make presentations can be heard, a 5-minute limit for each speaker has been established. Speakers who wish to provide further information for the record should submit such information to Mr. S. R. Wright at the address above by May 8, 1989. Comments received after that date will be considered to the extent practicable. DOE reserves the right to change the meeting locations and procedures for conduct of the scoping meetings and will provide notification of any changes.

DOE will prepare transcripts of the scoping meetings. The public may review the transcripts, other NEPA documents, and unclassified background information on this project at DOE public reading rooms during normal business hours. Addresses of these reading rooms are given below:

1. U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, University Library, 2nd Floor, University Parkway, Aiken, South Carolina 29801, (803) 648-6851.
2. U.S. Department of Energy, Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020.

For information of the availability of transcripts, contact the reading rooms at the telephone numbers listed above.

Signed in Washington, DC, this 16th day of March, 1989, for the United States Department of Energy.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-6691 Filed 3-17-89; 12:18 pm]

BILLING CODE 6450-01-M

Idaho Operations Office

Intent To Negotiate Cooperative Agreement; Babcock and Wilcox

AGENCY: Department of Energy.

ACTION: Intent to Negotiate and Award a Cooperative Agreement to Babcock and Wilcox, Agreement No. DE-FC07-89ID12868.

SUMMARY: Novel/Advanced Heat Exchanger System Concept for Recovering Waste Heat From Corrosive/Fouling Industrial Flue Gases. The U.S. Department of Energy (DOE), Idaho Operations Office intends to negotiate on a noncompetitive basis with Babcock and Wilcox, Lynchburg, Virginia. The Cooperative Agreement will be for a continuing work with DOE for the Defvelopment of an advanced composite ceramic heat exchanger. The Participant will: (1) design and fabricate a prototype composite ceramic heat exchanger and (2) evaluate the performance of the prototype heat exchanger at an industrial host site. The estimated budget for this cooperative agreement is $800,000. The authority and justification for Determination of Noncompetitive Financial Assistance (DNCFA), is DOE Financial Assistance Rules 10 CFR Part 600.7(2)(i) (A) and (D). (A) The activity to be funded is necessary to the satisfactory completion of or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. (D) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications. Public response may be addressed to the contract specialist stated below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer Contract Specialist at (208) 526-0014.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89-6632 Filed 3-20-89; 8:45 am]

BILLING CODE 6450-01-M

Intent To Negotiate Grant With Massachusetts Institute of Technology

AGENCY: Department of Energy.

ACTION: Intent to negotitate a Grant with the Massachusetts Institute of Technology, Cambridge, MA.

SUMMARY: "Linear Nozzle for Spray Casting Carbon Steel." The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate on a noncompetitive basis a grant for approximately $800,000 with the Massachusetts Institute of Technology (MIT), Cambridge, MA. This action is prompted by Public Law 99–190 which included a provision that funding be made "available for a research and development initiative with the National Laboratories . . . to increase significantly the energy effectiveness of processes that produce steel." This project will develop one of three unique nozzle spray forming concepts that will be evaluated as part of a larger spray forming project directed/managed by the Idaho National Engineering Laboratory (INEL). The objective of the MIT work is to develop, test, and characterize the linear, liquid dynamic compaction (LDC) nozzle, patented by a MIT professor, for use in a commercial spray forming process for producing quality carbon steel strip. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR Part 600.7(b)(2)(i), (D). The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications. The work at MIT definitely meets the purpose of Pub. L. 99–190, which in turn, addresses a public need (viz, increase significantly the energy efficiency of processes that produce steel). In serving this need, the U.S. Steel industry will strengthen its competitive position internationally. Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526–1536.

Date: March 14, 1989.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89–6633 Filed 3–20–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistant Award; Intent To Award Grant Agreement to University of Pennsylvania

AGENCY: U.S. Department of Energy (DOE); San Francisco Operation Office, Conservation and Renewable Energy Division.

Notice of Intent to make a Financial Assistant Award to the University of Pennsylvania on the acceptance of an unsolicited application.

ACTION: Pursuant to CFR 600.14, the U.S. DOE announces that it has accepted an unsolicited application for award of DE–FG03–89M110150 to the University of Pennsylvania, Office of Research Administration, to study, identify and develop appropriate support systems to increase retention rates of minorities in science-based curriculums at Historical Black Colleges and Universities. This effort supports the mission of the DOE Office of Minority Economic Impact as defined in 211(d) of Pub. L. 95–619, Section 641, and Executive Order 12320, HBCUs.

SUMMARY: The study will identify intra-individual differences between minority students at HBCUs who complete science-based curriculums and those who do not, and evaluate the findings against the socioeconomic status of the students. Several techniques will be utilized in viewing student distinctions that may impact retention. These include the Strong-Campbell Interest Inventory to compare the interest of the students in science-based fields and the Myers-Briggs Type Indicators to assess the students decision-making style. These and other techniques will be used to group students and evaluate which factors can be used to help spot potential dropouts and to develop appropriate support systems to increase retention rates of minorities in science-based studies. The study will focus on retention rate from an individual, rather than an institutional view point.

This noncompetitive financial assistance award is necessary to enhance the public benefits by developing techniques that will contribute to the solution of underpresentation of minority groups in science and engineering as indicated in recent studies from the National Task Force on Women, Minorities and the Handicapped in Science and Engineering. There is no known other entity which is conducting or is planning to conduct a study focused on retention factors of underpresented minorities from an individual viewpoint.

FOR FURTHER INFORMATION CONTACT: Birdie Hamilton-Ray, U.S. Department of Energy San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, March 14, 1989.

Kathleen M. Day,

Acting Director, Contacts Management Division.

[FR Doc. 89–6634 Filed 3–20–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: April 10, 1989, 8:30 a.m.–5:00 p.m.

Place: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Caucus Room, Washington, DC 20024.

Contact: Louis C. Iannielo, Department of Energy, Office of Basic Energy Sciences (ER–11), Office of Energy Research, Washington, DC 20545, Telephone: 301–353–3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda

Briefings and discussions of:

April 10, 1989.

- BES Program Status
- BESAC Subcommittee Reports
- BESAC Charge for 1989
- Public Comment (10 Minute Rule)

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: Louis C. Ianniello 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, 1E–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 March 15, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89–6635 Filed 3–20–89; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51700C; FRL-3540-6]

Certain Chemicals; Premanufacture Notice; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: In the Federal Register of December 5, 1988 (53 FR 48975), EPA issued a notice (FR Doc. 88-27894) terminating the review period for PMNs 88-14 and 88-138. The **SUPPLEMENTARY INFORMATION** in that notice was incorrect. The correct **SUPPLEMENTARY INFORMATION** is set forth below.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufactured Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-613, 401 M St., SW., Washington, DC 20460, (202) 382-3374.

SUPPLEMENTARY INFORMATION: The original review periods for P 88-134 and P 88-138 were scheduled to expire on January 20, 1988. EPA published a section 5(c) extension notice for the PMNs in the Federal Register of Jaunary 26, 1988 (53 FR 2888), to provide the Agency with sufficient time to issue an Order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substances in, or importing them into, the United States, pending the submission and evaluation of test data addressing the potential risk of injury to the environment.

After the section 5(c) extension was published, the Company voluntarily suspended the notice review periods and submitted additional toxicity testing. In light of this new information, EPA finds that the PMN substances do not present an unreasonable risk of injury to the environment.

Therefore, EPA is revoking the remaining portion of the extended review, effective November 16, 1988.

Dated: March 14, 1989.

John W. Melone,

Director, Chemical Control Division.

[FR Doc. 89-6550 Filed 3-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51596C; FRL-3540-7]

Certain Chemical; Premanufacture Notice; Termination of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: correction.

SUMMARY: In the Federal Register of December 5, 1988 (53 FR 48975), EPA issued a notice (FR Doc. 88-27893) terminating the review period for PMN 86-92. The **SUPPLEMENTARY INFORMATION** in that notice was incorrect. The correct **SUPPLEMENTARY INFORMATION** is set forth below.

FOR FURTHER INFORMATION CONTACT: R. James Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-613, 401 M Sreet, SW, Washington, DC 20460, (202) 382-3374.

SUPPLEMENTARY INFORMATION: The original review period for P 86-92 was scheduled to expire on August 31, 1987. EPA published a section 5(c) extension notice for the PMN in the Federal Register of September 16, 1987 (52 FR 34497), to provide the Agency with sufficient time to issue an Order under section 5(e). The Order would have prohibited the Company from manufacturing the PMN substance in, or importing it into, the United States, pending the submission and evaluation of test data addressing the potential risk of injury to the environment.

After the section 5(c) extension was published, the Company voluntarily suspended the notice review period and submitted additional toxicity testing. In light of this new information, EPA finds that the PMN substance does not present an unreasonable risk of injury to the environment.

Therefore, EPA is revoking the remaining portion of the extended review, effective November 16, 1988.

Dated: March 14, 1989.

John W. Melone,

Director, Chemical Control Division.

[FR Doc. 89-6551 Filed 3-20-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59262C; FRL-35405]

Certain Chemical; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modification of the production volume for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME-88-16. The test marketing conditions are discussed below.

EFFECTIVE DATE: February 23, 1989.

FOR FURTHER INFORMATION CONTACT: Alan S. Cole, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-3861.

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 a modification of the production volume for TME-88-16. EPA has determined that test marketing of the new chemical substance, under the conditions set out in the TME application and modification request, will not present any unreasonable risk of injury to health or the environment. Test marketing period, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application, including the use of protective equipment, must be met.

T-88-16

Notice of Approval of Original Application: September 6, 1988 (50 FR 34348).

Modified Production Volume: Confidential.

Commencing On: First date of manufacture.

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 signficant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: February 23, 1989

John Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 89-6549 Filed 3-20-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-821-DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA-821-DR), dated February 24, 1989 (published March 3, 1989, 54 FR 9085), and related determinations.

DATED: March 14, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice. The notice of a major disaster for the Commonwealth of Kentucky, dated February 24, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 24, 1989: The counties of Boyd, Breathitt, Floyd, Knott, Lawrence, Lee, Leslie, Letcher, Magoffin, Martin, Muhlenberg, Owsley, Berry, Pike, Rowan, and Wolfe for Individual Assistance and Public Assistance.

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

(Billing Code 6718.02)

[FR Doc. 89-6542 Filed 3-20-89; 8:45 pm]

BILLING CODE 6718-21-M

FEDERAL HOME LOAN BANK BOARD

Risk Based Capital Proposal Survey

Date: March 9, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a new information collection request, "Risk Based Capital Proposal Survey," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This information is required to evaluate alternative minimum capital requirements for Federal Savings and Loan Associations in connection with the proposed "Financial Institutions Reform, Recovery and Enforcement Act of 1989." This information will provide data necessary to assess the impact of proposed new capital regulations. We estimate it will take approximately 10 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before April 5, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503; Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006, Phone: 202-653-2751.

FOR FURTHER INFORMATION CONTACT: Robert Fishman, Senior Policy Analyst, Office of Regulatory Activities, 202-331-4592, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20006.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-6598 Filed 3-20-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. § 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in section 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010721-001

Title: Puerto Rico Ports Authority Terminal Agreement.

Parties: Puerto Rico Ports Authority and Transcaribbean Maritime Corporation.

Filing Party: Zulma Rivera Colon, Contracts Supervisor, Commonwealth of Puerto Rico, Ports Authority, G.P.O. Box 2829, San Juan, PR 00936.

Synopsis: The Agreement renews the basic lease agreement at Pier 14 San Juan, Puerto Rico for three years and increases the minimum monthly rental, the security for payment of rentals and other charges.

By Order of the Federal Maritime Commission.

Dated: March 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-6544 Filed 3-20-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after March 21, 1989. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200225

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority, Thames Shipping Company (Thames).

Synopsis: The Agreement provides for Thames to perform certain services for a consolidated rate based upon an agreed

upon unit rate per container at the Port's Savannah, Georgia container handling facilities. The term of the Agreement is for three years.

Agreement No.: 224–010774–004

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority (GPA), Evergreen Maritime Corporation, Costa Container Line (COSTA), Italia di Navigazione.

Synopsis: The Agreement modifies the rate schedule of Agreement No. 224–010774 to provide for a field services consolidated rate for Costa of $60.00 per loaded or empty container loaded on or unloaded from vessels at GPA's terminal. This rate is effective through September 30, 1989.

Agreement No.: 224–200226

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles, Metropolitan Stevedore Company.

Synopsis: The Agreement provides for a preferential berth assignment replacing Agreement No. 224–004093. The minimum compensation levels are increased reflecting improvements in the premises and increased land values.

By Order of the Federal Maritime Commission.

Dated: March 16, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–6545 Files 3–20–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fair Housing Advertising and Poster Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Order.

SUMMARY: The Board is updating its fair housing advertising and fair housing poster requirements for state member banks to reflect the 1988 amendments to the Fair Housing Act.

EFFECTIVE DATE: March 20, 1989.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background. In the early 1970s, the Board issued an order on the advertising of residential mortgage loans by state member banks to ensure compliance with the Fair Housing Act of 1968, 42 U.S.C. 3601–3619. (36 FR 25,168 (1971), amended 37 FR 8578 (1972)) (The Fair Housing Act prohibits discrimination in the rental, sale and financing of housing on the basis of race, national origin, color, religion, sex, handicap, or familial status. The latter two classes were added by the 1988 amendments to the act.) In addition to providing guidance on nondiscriminatory advertising, the Board's fair housing order includes the text of an equal housing lender poster that must be publicly displayed by state member banks. The display of a fair housing poster is required under the Department of Housing and Urban Development (HUD) fair housing regulation, 12 CFR 110.25, which also provides that HUD may grant a waiver permitting the substitution of a poster prescribed by a federal financial regulatory agency. Such a waiver has been granted.

The Board's order and poster were last updated in 1978 to reflect amendments to the Fair Housing Act and to make reference to the Equal Credit Opportunity Act, 15 U.S.C. 1691–1691f (43 FR 22,444 (1978)). The Equal Credit Opportunity Act prohibits discrimination in any aspect of a credit transaction on the basis of race, color, national origin, sex, marital status, age, religion; because all or part of a credit applicant's income is derived from public assistance; or because the credit applicant has in good faith exercised any right under the Consumer Credit Protection Act.

In September 1988, amendments to the Fair Housing Act were enacted into law, to take effect March 12, 1989 (Pub. L. No. 100–430, 102 Stat. 1619). In addition to adding new protected classes (handicapped persons and families with children under the age of 18), the amendments expand the prohibitions in section 805 of the act. As amended, the section prohibits discrimination in any residential real estate-related transaction. Previously this section referred to discrimination in financing, and to loans for the purchase, construction, improvement, repair or maintenance of a dwelling. The term residential real estate-related transaction includes any transaction secured by a dwelling (such as home equity lines of credit). The amendments to section 805 also expand it to apply to the selling, brokering, and appraising of residential real property and to secondary market activities.

The Board has made technical revisions updating its fair housing advertising order—including the poster requirement—to reflect the 1988 amendments. Copies of the new fair housing poster will be distributed to state member banks through the Federal Reserve Banks. Banks may continue to display the current poster until they receive the new poster.

The Board's order is revised to read as follows:

Fair Housing and Advertising Poster Requirements

1. Nondiscriminatory Advertising

(a) A state member bank that directly or through third parties engages in any form of advertising of any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling (as defined in section 3 of this order) or any loan secured by a dwelling shall prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format utilized, that the bank makes such loans without regard to race, color, religion, sex, or national origin, handicap, or familial status (having children under the age of 18).

(1) With respect to a written or visual advertisement, this requirement may be satisfied by including in the advertisement a facsimile of logotype with the equal housing lender legend contained in the Equal Housing Lender Poster prescribed in section 2 of this order.

(2) With respect to an oral advertisement, this requirement may be satisfied by a statement, in the spoken text of the advertisement, that the bank is an "equal housing lender."

(3) When an oral advertisement is used in conjunction with a written or visual advertisement, the use of either of the methods specified in subparagraphs (1) and (2) will satisfy the requirements of this paragraph (a).

(b) No advertisement shall contain any words, symbols, models, or other forms of communication that express, imply, or suggest a discriminatory preference or policy of exculusion in violation of the provisions of the Fair Housing Act or the Equal Credit Opportunity Act.

2. Equal Housing Lender Poster

(a) A state member bank that engages in extending any loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling (as defined in section 3 of this order) or any loan secured by a dwelling shall conspicuously display an Equal Housing Lender Poster in any public lobby and area within the bank where deposits are

received or where such loans are made in a manner clearly visible to the general public entering such areas.

(b) The Equal Housing Lender Poster shall be at least 11 by 14 inches in size and shall have the following text:

EQUAL HOUSING LENDER

We Do Business in Accordance With Federal Fair Lending Laws

Under the Federal Fair Housing Act, it is illegal, on the basis of race, color, national origin, religion, sex handicap or familial status (having children under the age of 18), To:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of such a loan, or in appraising property.

If you believe you have been discriminated against, you should send a complaint to:

Assistant Secretary for Fair Housing and Equal Opportuntity, Department of Housing & Urban Development, Washington, DC 20410, for processing under the Federal Fair Housing Act

and to:

Division of Consumer & Community Affairs, Federal Reserve Board, Washington, DC 20551, for processing under Federal Reserve regulations.

Under the Equal Credit Opportunity Act, it is illegal to discriminate in any credit transaction:

- On the basis of race, color, religion, national origin, sex, or marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

If you believe you have been discriminated against, you may send a complaint to:

Division of Consumer & Community Affairs, Federal Reserve Board, Washington, DC 20551.

3. Definition of Dwelling

"Dwelling" means any building, structure (including a mobile home), or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more natural persons and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

By order of the Board of Governors of the Federal Reserve System, dated March 15, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-6516 Filed 3-20-89; 8:45 am]

BILLING CODE 6210-01-M

Artemisia Holdings, 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 April 14, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Artemisia Holdings, Inc.*, Stamford, Connecticut; to become a bank holding company by acquiring 24.9 percent of the voting shares of Connecticut Bancorp, Inc., Norwalk, Connecticut.

2. *Constellation Bancorp*, Elizabeth, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of New Brunswick Savings Bank, New Brunswick, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bankers Capital Corporation*, Forest, Mississippi; to become a bank holding company by acquiring 50.01 percent of the voting shares of The Metropolitan Corporation, Biloxi, Mississippi, and thereby indirectly aqcuire 100 percent of the voting shares of Metropolitan National Bank, Biloxi, Mississippi.

Board of Governors of the Federal Reserve System, March 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6517 Filed 3-20-89; 8:45 am]

BILLING CODE 6210-01-M

Erie Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 April 10, 1989.

A. Federal Reserve Bank of Kansas City (Thomas H. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Erie Bankshares, Inc.*, Erie, Kansas (parent of The Home State Bank, Erie, Kansas), to merge with Chetopa State Bancshares, Inc., Chetopa, Kansas (parent of Chetopa State Bank and Trust Company, Chetopa, Kansas).

2. *Erie Bankshares, Inc.*, Erie, Kansas (parent of The Home State Bank, Erie, Kansas), to merge with First Neodesha Bancshares, Inc., Neodesha, Kansas (parent of First Neodesha Bank, Neodesha, Kansas).

3. *Erie Bankshares, Inc.*, Erie, Kansas (parent of The Home State Bank, Erie, Kansas), to merge with Neosho County Bancshares, Inc., Chanute, Kansas (parent of Bank of Commerce, Chanute, Kansas).

In connection with this application, Applicant has also applied to engage in credit insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6518 Filed 3-20-89; 8:45 pm]

BILLING CODE 6210-01-M

Republic New York Corp. et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engatge *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 4, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Republic New York Corporation*, New York, New York, and Saban, S.A., Panama City, Panama, to engage *de novo* through its subsidiary Republic New York Mortgage Corporation, New York, New York, in making, acquiring, and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlantia (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Barnett Banks, Inc.*, Jacksonville, Florida; to engage *de novo* through its subsidiary Barnett Merchant Services, Inc. ("BMSI"), Jacksonville, Florida, in offering a package of Telecheck services to subscribing financial institutions known as the "Financial Institutions Package;" and offering a *de novo* package of new account and credit verification services to subscribing merchants and financial institution customers, known as "Verification Only Program." The services in these packages would include: check verification without warranty; new account screening; credit card and loan application verification; skip tracing; and fraud protection services. The activities are permissible pursuant to §§ 225.25(b)(22) and 225.25(b)(24) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6519 Filed 3-20-89; 8:45 pm]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 13, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Roderick S. Sturdivant*, Lilburn, Georgia; to acquire up to 24 percent of the voting shares of The Gwinnett Financial Corporation, Lawrenceville, Georgia, and thereby indirectly acquire The Bank of Gwinnett County, Lawrenceville, Georgia.

Board of Governors of the Federal Reserve System, March 15, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6520 Filed 3-20-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Salinomycin for Use in Quail; Availability of Data

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness, tissue residue depletion, and environmental data to be used in support of a new animal drug application (NADA) or supplemental NADA for the use of salinomycin in Type C quail feed. The data, contained in Public Master File (PMF) 5020, were compiled under Interregional Research Project No. 4 (IR-4 Project), a national agriculture program for obtaining

clearances for use of agricultural products for minor or special uses.

ADDRESS: Submit NADA's to the Document Control Section (HFV–16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: The use of salinomycin in quail feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, salinomycin is subject to section 512 of the act (21 U.S.C. 360b) requiring that its uses in quail be covered by an approved NADA or supplemental NADA. The IR–4 Project, Northeastern Region, Cornell University, Ithaca, NY 14853, has provided data and information to demonstrate effectiveness and safety to the target animal and tissue residue depletion for use of salinomycin in Type C quail feed for prevention coccidiosis caused by *Eimeria dispersa* and *E. lettyae*. The IR–4 Project also provided an environmental assessment of possible impacts at the site of use of the animal drug product. The data and information are contained in PMF 5020. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling and other information needed for approval, such as data concerning human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process.

Target animal safety and effectiveness and the environmental impact assessment on site of use are based on a dosage level of 50 grams of salinomycin per ton of Type C medicated feed. However, because of experimental error, the tissue residue depletion study was conducted at 40 grams of salinomycin per ton of feed. Therefore, any sponsor must demonstrate that 50 grams of salinomycin per ton of quail feed will not cause harmful residues in quail tissue. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Dianne T. McRae (address above).

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information in this PMF submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: March 13, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89–6533 Filed 3–20–89; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Final Funding Priorities for Advanced Nurse Education Grants

The Health Resources and Services Administration announces the final funding priorities for Grants for Advanced Nurse Education under section 821 of the Public Health Service Act, as amended by Pub. L. 100–607.

Section 821 of the Public Health Service Act, as implemented by 42 CFR Part 57, Subpart Z, authorizes assistance to meet the costs of projects to (a) Plan, develop and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary of Health and Human Services to require advanced education.

Eligible applicants are public and nonprofit private collegiate schools of nursing.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(a) The current or anticipated need for professional nurses educated in the specialty; and

(b) The relative number of programs offering advanced education in the specialty;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which the education is to be provided and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and 42 CFR 57.2506;

(6) The capability of the applicant to carry out the proposed project;

(7) The soundness of the fiscal plan for assuring effective utilization of grant funds;

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

For this program, the following Departmental special consideration and statutory funding priority will be applied.

Special Consideration

Special consideration will be given to: applicant institutions that indicate a clear financial need, and plan to sustain programs beyond the period during which Federal assistance is available.

Funding Priority

Section 821(a) of the statute requires that the Secretary give priority to geriatric and gerontological nursing.

Proposed funding priorities were published in the **Federal Register** of January 6, 1989 (FR 486) for public comment. One comment was received during the 30-day comment period.

The respondent expressed concern about the priority to increase minority students in graduate nursing education in relation to the priority to develop, expand or implement courses concerning the case management of HIV infection-related diseases. The respondent requested that the minority priority be deleted or lowered.

The comment is appreciated. The Department believes that continued efforts must be made to increase the number of minority students in graduate nursing education because minority students are currently underrepresented in these programs. The Department also believes that graduate nursing programs offering preparation in the area of HIV infections should be encouraged. To that end, both foci receive priority consideration.

Therefore, as proposed, the final funding preferences are retained as follows:

A funding priority will be given to:

(1) Applicant institutions that have either a 3-year average enrollment of minority students in graduate nursing education in excess of the national average or demonstrate an increase in minority enrollment in the graduate program which exceeds the program's prior 3-year average.

(2) Applications which develop, expand or implement courses concerning ambulatory, home health care and/or inpatient case management of those with HIV infection-related diseases.

This program is listed at 13.299 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR Part 100).

Dated: March 15, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-6596 Filed 3-20-89; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Arthritis Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on April 16 and 17, 1989. The subcommittees will meet April 16, 7:30 p.m. to approximately 10 p.m., and the full board will meet April 17, 8:30 a.m. to approximately 5 p.m., at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 15, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89-6574 Filed 3-20-89; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Rural Health Medical Education Demonstration Project; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of February 23, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator, Health Resources and Services Administration, has redelegated the authorities delegated to him under section 4038, which provides for the Rural Health Medical Education Demonstration Project, to the Director, Bureau of Health Professions, except section 4038(d) which was delegated to the Administrator, Health Care Financing Administration.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on March 14, 1989.

Date: March 14, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-6535 Filed 3-20-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-1958]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: March 14, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Solicitation Mailing List Application

Office: Administration

Description of the Need for the Information and Its Proposed Use: This document will be used, as required by Federal Acquisition Regulation Part 14, Sealed Bidding, by persons wishing to be placed on the Department's Solicitation Mailing List

Form Number: SF-129

Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Other

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
SF-129	1,200		1		.1		120

Total Estimated Burden Hours: 120
Status: Extension
Contact: Gladys Gines, HUD, (202) 755-5294, John Allison, OMB, (202) 395-6880

Date: March 14, 1989.

Proposal: Public Housing Manager Certification—Application Requirements

Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: The information collected will be used to select national housing management organizations for the purpose of certifying housing managers who will effect the improvement of management in public housing projects
Form Number: None
Respondents: Businesses or Other For-Profit and Non-Profit Institutions
Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	3		1		40		120

Total Estimated Burden Hours: 120
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 755-7970, John Allison, OMB, (202) 395-6880

Date: March 14, 1989.

Proposal: Community Development Block Grant (CDBG) Entitlement Program

Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: An annual report from CDBG entitlement grantee is required by law to enable the Secretary to make his annual, statutory review of performance and compliance for rehabilitation activities which account for one out three dollars of CDBG expenditures
Form Number: HUD-4949.1 thru 4949.7
Respondents: State or Local Governments
Frequency of Submission: Recordkeeping and Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Requirements:							
Final Statement	825		1		39		32,175
Housing Assistance Plan	825		1		42		34,650
Grantee Performance Report	825		1		201		165,825
Total							232,650
Recordkeeping Requirements:							
Relocation, displacement, acquisition	825		1		5		4,125
General recordkeeping	825		1		123		101,475
Total							105,600

Estimated Burden Hours: 338,250
Status: Revision
Contact: James R. Broughman, HUD (202) 755-5977, John Allison, OMB, (202) 395-6880

Date: March 14, 1989.

Proposal: Indian Housing Mutual Help Program—Mutual Help and Occupancy Agreement
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: This iformation will be used to execute a standard contract in the Mutual Help Program. It also will be used to conduct annual inspections for occupied Indian housing units
Form Number: None
Respondents: Non-Profit Institutions
Frequency of Submission: On Occasion and Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Agreement	1,200		1		.3		360
Inspections	65,000		1		3		195,000

Total Estimated Burden Hours: 195,360
Status: Reinstatement
Contact: Patricia Arnaudo, (HUD), (202) 755-1015, John Allison, OMB, (202) 395-6880

Date: March 14, 1989.

Proposal: Grant and Cooperative Agreement Request for Application and General Reporting Requirements for Grant and Cooperative Agreement Recipients
Office: Administration
Description of the Need for the Information and Its Proposed Use:

Potential recipients will respond to a Request for Application (RFA) in order to receive an award, after which periodic reports are necessary to ensure that the technical progress is satisfactory

Form Number: HUD–274
Respondents: Individuals or Households, State or Local Governments, Businesses or Other For-Proft, Non-Profit Institutions, and Small Businesses or Organizations

Frequency of Submission: Recordkeeping, Quarterly, and Annually
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–274	140		1		.25		35
Technical Progress Report	200		4		40		32,000

Total Estimated Burden Hours: 32,035
Status: Extension
Contact: Gladys Gines, HUD, (202) 755–5294, John Allison, OMB, (202) 395–6880

Date: March 14, 1989.

[FR Doc. 89–6553 Filed 3–20–89; 8:45 am]

BILING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1959; FR–2625]

Committee on Housing for Handicapped Families; Meeting

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commmissioner, HUD.

ACTION: Meeting of the Federal Advisory Committee on Housing for Handicapped Families.

SUMMARY: This notice announces the first meeting of the Federal Advisory Committee on Housing for Handicapped Families. The meeting will be held on April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Elderly and Assisted Housing—Housing for Handicapped People, Office of Multifamily Housing Programs, 451 Seventh Street, SW, Room 9106, Washington, DC, 20410–8000; telephone: (202) 755–6490 (voice or TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 162 of the Housing and Community Development Act of 1987 requires the secretary to adopt distinct standards and procedures for development of housing for handicapped families under the Section 202 program that reflect the differences between such housing and housing for elderly families also developed under Section 202. In adopting these standards, the Secretary is directed to ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act. In compliance with the Act, an announcement of intent to establish the Committee was published in the Federal Register on Jan. 24, 1989 (54 FR 3541).

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, § 10(a)(2), announcement is made of the following meeting:

The Federal Advisory Committee on Housing for Handicapped Families will meet on Friday, April 7, 1989. The meeting will convene at 9 A.M. at the Department of Housing and Urban Development, Room 10233, 451 Seventh Street, SW., Washington, DC, 20410–8000. The meeting is open to the public. Names of committee members may be obtained by calling (202) 755–6490.

The Committee will assist and advise the Department in implementing the legislation, as the Department adopts distinct standards and procedures for the allocation of funds and the processing of applicants for loans and assistance payments under the new program.

The agenda will include a review of the Department's final rule for the new program, including a discussion of public comment received, a presentation by the architect of the group home design on which development cost limits will be based, and a discussion of FY 1989 funding schedule and procedures. The final agenda will be available at the meeting.

Authority: Section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; Section 10 of the Federal Advisory Committee Act., 5 U.S.C. App. I.

Date: March 15, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–6552 Filed 3–20–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–940–09–4121–14; (U–63214)]

Coal Lease Offering By Sealed Bid; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that at 1:00 p.m., Monday, April 17, 1989, certain coal resources in lands hereinafter described in Sevier County, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). Sealed bids must be submitted on or before 10:00 a.m. Monday, April 17, 1989. *However, no bid will be accepted for less than fair market value as determined by the authorized officer.*

A company or individual is limited to *one sealed bid.* If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

FOR FURTHER INFORMATION CONTACT: BLM Public Room (810) 539–4000.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid equals fair market value. The minimum bid for the tract is $100.00 per acre or fraction thereof. No bid that is less than $100.00 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt, or be hand-delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after the time specified above will not be considered. The minimum bid is not intended to represent fair market value. The fair market value will be

determined by the Authorized Officer after the sale.

Coal Offered: The coal resources to be offered consist of all recoverable reserves available in the following-described lands located in Sevier County, Utah, approximately five miles west of the town of Emery, Utah:

T. 21 S., R. 4 E., SLM, Utah.
Sec. 12, E½SE¼;
Sec. 13, E½NE¼, S½;
Sec. 14, E½SW¼, SE¼;
Sec. 23, E½, E½W½;
Sec. 24, all.
T. 21 S., R. 5 E., SLM, Utah.
Sec. 15, W½;
Secs. 16–21, all;
Sec. 22, W½;
Sec. 26, W½NW¼SW¼, SW¼SW¼;
Sec. 27, all;
Sec. 28, N½, NW¼SW¼, SE¼SW¼, SE¼;
Sec. 29, E½NE¼, NE¼SE¼;
Sec. 30, lot 1, N½NE¼;
Sec. 33, lots 2–4, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 34, all;
Sec. 35, lots 1, 2, W½NW¼, N½SW¼.
T. 22 S., R. 5 E., SLM, Utah.
Sec. 3, lots 1–4, S½N½, NE¼SW¼, S½SW¼, N½SE¼, SW¼SE¼;
Sec. 4, lots 1, 2, S½NE¼, SE¼SE¼;
Sec. 9, NE¼NE¼;
Sec. 10, W½NE¼, NW¼, N½SW¼.
Containing 9,905.46 Acres.

Two economically minable beds, the Upper Hiawatha and Lower Hiawatha, are found in this tract. The Upper Hiawatha seam averages 12.4 feet in thickness and the Lower Hiawatha seam averages 5.4 feet in thickness. This tract contains an estimated 84 million tons of recoverable high volatile C bituminous coal. The range of coal quality is approximately as follows:

11,200—11,600 BTU/lb.;
7.5—8.5 percent moisture;
.4—1.5 percent sulphur;
9—12 percent ash;
42—46 percent fixed carbon;
36.50—38.25 percent volatile matter.

Sodium values range from approximately 2 percent to 7 percent with data available on only a limited portion of the tract.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of coal mined by underground methods. The value of coal shall be determined in accordance with 30 CFR 203.200.

Notice of Availability: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and of the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303 or in the Public Room (Room 400). All case file documents and written comments submitted by the public on fair market value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

James M. Parker,
State Director.
Date: March 14, 1989.

[FR Doc. 89–6536 Filed 3–20–89; 8:45 am]
BILLING CODE 4310-DQ-M

[NV–930–09–4212–14; N–48199]

Realty Action; Competitive Sale of Public Lands in Clark County, NV

The following described public land in North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing competitive procedures, at not less than fair market value. Authority for the sale in section 203 of Pub. L. 94–597, the Federal Land Policy and Management Act of 1976 (FLPMA).

The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E., M.D.M.
Sec. 29, SE¼NW¼

Aggregating 40 acres (gross)

This land is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interest being offered for conveyance have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

Adjoining landowners have no preference rights. Only U.S. citizens and legally chartered U.S. corporations are eligible to purchase these lands. Specific information regarding the sale and procedures will be published in a sale brochure and made available to the public prior to the sale.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. this segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Pub. L. 94–579, or other applicable laws.

Date: March 9, 1989.

Ben F. Collins,
District Manager, Las Vegas, NV.

[FR Doc. 89–6628 Filed 3–20–89; 8:45 am]
BILLING CODE 4310-HC-M

[OR–010–09–4333–01: GP9–139]

Limitation on Overnight Recreational Camping

AGENCY: Bureau of Land Management.

ACTION: Notice to limit overnight recreational camping.

SUMMARY: The Bureau of Land Manaagement, Department of the Interior, Lakeview District is restricting overnight recreational camping to 14 consecutive days on all public lands it administers in Lake, Klamath and Harney Counties, Oregon.

FOR FURTHER INFORMATION CONTACT: Judy Ellen Nelson, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630, 503–947–2177.

SUPPLEMENTARY INFORMATION: Notice is hereby given relating to the use of public lands for overnight recreational camping in accordance wth 43 CFR 8364.1 and 43 CFR 8365.1–2. The following described lands under the administration of the Bureau of Land Managment are designated limited, to occupancy and use for recreational overnight camping pursuant to the provisions of 43 CFR 8365.1–2.

This decision affects approximately 3,390,279 acres of public lands in the Lakeview District, Bureau of Land Management in Klamath, Lake and Harney Counties, Oregon. The designation of limited to occupancy and use of the described lands for recreational overnight camping is year long. The designation is done to protect the public lands and their resources from degradation associated with continued or prolonged recreational camping use. The designation order is in conjunction with previously implemented off-road designations for the described lands and does not supersede any previous multiple use or land classification decisions.

This designation is published as final, effective today. Under 43 CFR 4.21 an appeal may be filed with the Interior Board of Land Appeals.

A. Limited designation—Areas which are designated as limited include all the public lands administered by the Lakeview District, Bureau of Land Management in Klamath, Lake and Harney Counties Oregon, an area of approximately 3,390,279 acres.

The following describes the type of restriction pursuant to occupancy and recreational overnight camping use.

1. Occupancy and recreational overnight camping use will be restricted to fourteen (14) consecutive nights on all public lands, 3,390,279 acres administered by the Lakeview District, BLM, in Lake Klamath and Harney Counties, Oregon.

Terry H. Sodorff,

Acting District Manager.

[FR Doc. 89–6525 Filed 3–20–89; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Availability of Plan of Operations and Environmental Assessment for Dunn-McCampbell Directional Exploratory Wells 1 and 2; Tana Oil and Gas Corp., Padre Island National Seashore, Kenedy County, TX

Notice is hereby given in accordance with § 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Tana Oil and Gas Corporation a Plan of Operations to directionally drill two exploratory wells, Dunn-McCampbell Nos. 1 and 2, located in Padre Island National Seashore, Kenedy County, Texas.

The Plan of Operations and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Padre Island National Seashore, 9405 South Padre Island Drive, Corpus Christi, Texas 78418; and the Southwest Regional Office, National Park Service, 1220 South St. Francis Drive, Room 347, Santa Fe, New Mexico. Copies are available from the Southwest Regional Office, Post Office Box 728, Santa Fe, New Mexico 87504–0728, and will be sent upon request.

Date: March 14, 1989.

Tanna Chattin,

Acting Regional Director, Southwest Region.

[FR Doc. 89–6614 Filed 3–20–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 10, 1989. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 5, 1989.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Gila County

Archeological Site No. AR–03–12–06–1130 (TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000273

Archeological Site No. AR–03–12–06–1131, (TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000274

Casa Bandolero (AR–03–12–06–811 TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000270

Cline Terrace Platform Mound (AR–03–12–06–132 TNF), (Bandelier's Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000269

Indian Point Ruin (AR–03–12–06–296 TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000268

Oak Creek Platform Mound (AR–03–12–06–714 TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000271

Park Creek Platform Mound (AR–03–12–06–1044 TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Punkin Center vicinity, 89000272

Schoolhouse Point (AR–03–12–06–13 TNF), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Address Restricted, Roosevelt vicinity, 89000267

Tonto National Monument, Lower Ruin (AZ U:8:047A ASM), (Bandelier's Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Off AZ 188, Roosevelt vicinity, 89000265

Tonto National Monument, Upper Ruin (AZ U:8:048 ASM), (Bandelier's, Adolph F. A., Archeological Survey of Tonto Basin, Tonto National Forest, MPS), Off AZ 188, Roosevelt vicinity, 89000266

CALIFORNIA

Alameda County

Locke House, 3911 Harrison, St., Oakland, 89000258

San Diego County

Oceanside City Hall and Fire Station, 704 and 714 Third St., Oceanside, 89000257

KENTUCKY

Grayson County

St. Augustine Catholic Church, KY 88, Grayson Springs vicinity, 89000259

MAINE

Androscoggin County

Main Street Historic District, Roughly bounded by Drummond, Main, Elm, and High Sts., Auburn, 89000255

Aroostook County

Fort Kent Railroad Station, Jct. Main and Market Sts., Fort Kent, 89000249

Cumberland County

Goold House, 280 Windham Center Rd., Windham vicinity, 89000251

Peabody—Fitch House, Off Ingalls Rd., South Bridgton vicinity, 89000254

Franklin County

McCleary Farm, S. Strong Rd., Strong vicinity, 89000253

Kennebec County

Blossom House, Main St., Monmouth, 89000250

Capitol Park, Roughly bounded by Capitol St., Kennebec River, Union St., and State St., Augusta, 89000252

Piscataquis County

Little Schoodic Stream Archeological Site (107–4), Address Restricted, Medford vicinity, 89000258

MISSISSIPPI

Warren County

Harrison Street Historic District, Roughly Harrison St. from Central Illinois Railroad tracks to Cherry St., Vicksburg, 89000262

South Cherry Street Historic District, Roughly bounded by Belmont, Cherry, Baum, Frederick, Chambers, and Cherry Sts., Bowmar Ave., and Drummond St., Vicksburg, 89000261

NEW YORK

Dutchess County

Kip—Beekman—Heermance Site (A027–16–0223), (Rhinebeck Town MRA), Address Restricted, Rhinecliff vicinity, 89000260

Westchester County

Van Cortlandtville School, 297 Locust Ave., Van Cortlandtville, 89000285

TENNESSEE

Maury County

North Main Street Historic District, (Mount Pleasant MPS), Roughly N. Main St., from Shofner St., to Third St., Mount Pleasant, 89000263

Pleasant Historic District, (Mount Pleasant MPS), Roughly bounded by Haylong Ave., Pleasant, Bond, Wheeler, Adams, and Cherry St., Washington Ave., and College St., Mount Pleasant, 89000264

UTAH

Beaver County

Upper Beaver Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), UT 153 10 mi. E of Beaver, Beaver vicinity, 89000282

Box Elder County

Cutler Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), Off UT 30 at Bear River, Beaver Dam vicinity, 89000280

Morgan County

Devil's Gate—Weber Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), I–84 E of jct with I–89, Ogden vicinity, 89000276

Salt Lake County

Granite Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), UT 152, Salt Lake City vicinity, 89000283

Stairs Station Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), UT 152, Salt Lake City vicinity, 89000284

Sanpete County

Fountain Green Hydroelectric Plant Historic District, (Electric Power Plants of Utah MPS), NW of Fountain Green, Fountain Green vicinity, 89000277

Utah County

Upper American Fork Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), UT 80, Highland vicinity, 89000278

Wasatch County

Snake Creek Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), UT 220, Heber City vicinity, 89000279

Washington County

Santa Clara Hydroelectric Power Plants Historic District, (Electric Power Plants of Utah MPS), Off UT 18 on Santa Clara River, Veyo vicinity, 89000281

Weber County

Pioneer Hydroelectric Power Plant Historic District, (Electric Power Plants of Utah MPS), 12th St. at Canyon Rd., Ogden, 89000275

The commenting period for the following properties has been shortened to five days in order to assist in their preservation:

DELAWARE

Kent County

Fourteen Foot Bank Light, On Fourteen Foot Bank in Delaware Bay, 12 mi. E of Bowers, Bowers vicinity, 89000286

New Castle County

Marcus Hook Range Rear Light, Light House Rd., Wilmington vicinity, 89000287

Reedy Island Range Rear Light, Jct. of DE 9 and Rd. 453, Taylor's Bridge vicinity, 89000288

Sussex County

National Harbor of Refuge and Delaware Breakwater Harbor Historic District, Mouth of Delaware Bay at Cape Henlopen, Lewes, 89000289

[FR Doc. 89–6613 Filed 3–20–89; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Unsuitability Criteria; Decision on Request for Determination of Substantial Legal and Financial Commitments

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of decision on request for determination of substantial legal and financial commitments.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a request for a determination of substantial legal and financial commitments for a surface coal mining operation on lands in Kane County, Utah, that have been designated as unsuitable for surface coal mining operations. On March 2, 1989, the Director made a decision not to grant the determination of substantial legal and financial commitments.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of Regulatory Programs, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: Section 522(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1272(c), and 30 CFR Part 769 establish a process by which a person with an interest which is or may be adversely affected by surface coal mining on Federal lands may petition the regulatory authority to have an area declared unsuitable for all or certain types of surface coal mining operations. The term "surface coal mining operations" is defined in Section 701(28) of SMCRA and 30 CFR 700.5 and includes the surface impacts incident to underground coal mining operations. Section 522(a)(6) of SMCRA (30 U.S.C. 1272(a)(6) and 30 CFR 762.13 exempt from unsuitability designations, lands where substantial legal and financial commitments in a surface coal mining operation were in existence prior to January 4, 1977. The term "substantial legal and financial commitments in a surface coal mining operation" (SLFC) is defined in 30 CFR 762.5 as "significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments." (53 FR 26582)

On November 28, 1979, OSMRE, as the regulatory authority for Federal lands (Section 523 and 701(22) of SMCRA), received a petition to designate certain federal lands in southern Utah as unsuitable for surface coal mining operations. On September 16, 1980, BHP-Utah International Inc. (UII) and Nevada Electric Investment Company (NEICO) formally intervened in the unsuitability proceedings. On September 18, 1980, UII requested a determination of SLFC and exemption from any designation of unsuitability under section 522(a)(6) of SMCRA.

A determination of SLFC may be granted if the Director of OSMRE determines that SLFC were in existence prior to January 4, 1977, on lands subject to an unsuitability petition. (SMCRA Section 522(a)(6) and 30 CFR 762.13). Such a determination does not constitute an approval to mine; the responsibility to comply with the permitting and performance standard requirements of the Federal lands programs is in no way affected.

The Secretary of the Interior issued a decision on the unsuitability petition on December 16, 1980, and a Statement of Reasons was issued on January 13, 1981. The Secretary declared unsuitable for surface coal mining the eastern portion of the Alton coal field and areas adjacent to Bryce Canyon National Park, finding that such mining would significantly affect the values for which the Park was established. Underground mining is not banned by the decision, but surface impacts incident to underground mining activity that would be visible from Bryce Canyon National Park are banned. These areas contain the UII leases for which the determination of SLFC was requested.

The Director has reached a decision that the UII request fails to establish SLFC prior to January 4, 1977, as defined in 30 CFR 762.5. The Director has issued a letter-decision, a copy of which is attached as an appendix to this notice.

Dated: March 16, 1989.

Brent Wahlquist,

Assistant Director, Program Policy, Office of Surface Mining Reclamation and Enforcement.

Appendix

The Director's letter dated March 2, 1989, is as follows:

Mr. Ronald E. Van Buskirk,
Pillsbury, Madison & Sutro, 225 Bush Street, P.O. Box 7880, San Francisco, California 94120.

Dear Mr. Van Buskirk: In response to your letter of October 3, 1988, on behalf of your client, BHP-Utah International Inc. (UII), regarding its Federal coal leases in Kane Country, Utah, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has reviewed your request for a determination of "substantial legal and financial commitments" (SLFC) under section 522(a)(6) of the Surface Mining Control and Reclamation Act (SMCRA). In your letter, you requested that OSMRE proceed with a decision on UII's pending request for an SLFC determination for a surface coal mining operation on those lands which have been designated as unsuitable for surface coal mining operations.

On October 27, 1988, OSMRE notified you that you request was being reviewed. We have completed our review and have found that UII has not made substantial legal and financial commitments within the meaning of section 552(a)(6) of SMRCA and 30 CFR 762.5 for the following twelve Federal leases: lease numbers U–15938; U–0122582; U–0122623; U–0122647; U–0122649; U–0122650; U–0122651; U–10122652; U–0124768; U–0126916; U–0149582; and U–098774 (subject to a partial designation of unsuitability).

Section 522(a)(6) of SMCRA states:

> The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on the date of enactment of this Act or under a permit issued pursuant to this Act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

The regulation at 30 CFR 762.5 defines substantial legal and financial commitments in a surface coal mining operation to mean "significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction storage facilities, and other capital-intensive activities. Costs of acquiring the coal in place, or the right to mine it alone without other significant investments, as described above, are not sufficient to constitute substantial legal and financial commitments." (53 FR 26582)

Although UII's request for an SLFC determination and supporting documentation state that before January 4, 1977, UII had taken various actions and incurred $3,245,360.00 in expenses attributable to those actions concerning the Alton coal filed, the information submitted by UII does not state to what extent these expenses and actions are attributable solely to lands within the area designated unsuitable for surface mining. In addition, the information provided by UII indicates that these actions and investments were not made on the basis of a long-term coal contract prior to January 4, 1977, as required by SMCRA section 522(a)(6) and 30 CFR 762.5. (Letter from R. E. Van Buskirk, dated October 3, 1988).

The UII request for an SLFC determination raised a series of concerns as to whether denial of SLFC would impose a compensable taking. These allegations are not relevant to whether UII qualifies for SLFC under 30 CFR 762.5. Also, these concerns are the subject of separate proceedings (*Utah International, Inc.* v. *U.S.*, No. 782–86L (C1. Ct.)) and will not be addressed in this decision.

UII also indicated the SLFC should be found because UII would be entitled to a finding of valid existing rights (VER) under SMCRA section 522(e). Because the concept of VER applies to lands subject to SMCRA section 522(e) and does not apply to lands designated pursuant to section 522(a), the question of entitlement to VER is irrelevant to this decision.

UII has expressed concerns as to the legality of the definition of SLFC at 30 CFR 762.5. The coal industry challenged the 1983 revision to this definition, and the court remanded for clarification by OSMRE on one point. (*In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C., July 15, 1985)) However, the court did not remand the definition with respect to long-term coal contracts; but rather found that (with the exception of the clarification concerning existing mines which was the subject of the remand) the definition as promulgated has much support in the legislative history and was not unreasonable or contrary to law. The clarification for which the court remanded was published as a final rule on July 13, 1988 (53 FR 26582), and was not timely challenged. Under SMCRA section 526(a)(1), the SLFC definition is no longer subject to challenge, and UII is bound by its terms.

For the above reasons, OSMRE has determined that UII did not make substantial legal and financial commitments prior to January 4, 1977, for its lands subject to the designation. This decision is a final determination of the Department of the Interior.

Sincerely,

Robert Gentile,

Director.

[FR Doc. 89–6612 Filed 3–20–89; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 264X)]

CSX Transportation, Inc.; Abandonment Exemption; in Grant and Miami Counties, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of 19.27 miles of rail line in Grant and Miami Counties, IN, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption wil be effective on April 20, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 31, 1989, petitions to stay must be filed by April 5, 1989, and petitions for reconsideration must be filed by April 17, 1989. Requests for a public use condition must be filed by March 31, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 264X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

[1] *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).

(2) Petitioner's representative: Lawrence H. Richmond, CSX Transportation, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (TDD for hearing impaired: (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721.)

Decided: March 13, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6512 Filed 3–20–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–303; Sub-No. 1X]

Notice of Exemption [1]; Wisconsin Central, Ltd; Abandonment Exemption In Price and Taylor Counties, WI

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 25.9-mile line of railroad between milepost 343.3 near Prentice, in Price County, WI, and milepost 317.4 near Medford, Taylor County, WI.

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 April 6, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by March 17, 1989.[4] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by March 27, 1989 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: William C. Sippel, 233 N. Michigan Ave., Suite 2400, Chicago, IL 60601.

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 March 10, 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: March 15, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–6554 Filed 3–20–89; 8:45 am]

BILLING CODE 7035–01–M

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[1] The purpose of this republication is to correct the notice published March 7, 1989 (54 FR 9570) to show applicant's representative's complete address.

[2] 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.

[3] *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).

[4] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

March 16, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and (7) an indication as to whether Section 3504(h) of Public Law 96–511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633–4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer *AND* the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, *AND* to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) REPORT OF STATUS TREATY TRADER OR INVESTOR.
(2) I-126, Immigration and Naturalization Service.
(3) Annually.
(4) Individuals or households. This information is used to determine whether an alien admitted to the U.S. as a treaty trader or investor is maintaining status.
(5) 45,000 respondents at .335 hours per response.
(6) 15,075 estimated annual burden hours.
(7) Not applicable under 3504(h).

Larry E. Miesse,

Departmental Clearance Officer.

[FR Doc. 89-6608 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-10-M

Joint Newspaper Operating Agreement

Notice is hereby given that the Attorney General has received an application for approval of a joint operating agreement involving the two newspapers in York, Pennsylvania. The application was filed on February 22, 1989 by the York Daily Record and the York Dispatch/York Sunday News. The proposed arrangement provides that the printing and commercial operation of both newspapers be handled by the York Newspaper Company, a general partnership created by the newspapers. According to the application all the editorial and reporting functions and policies of each newspaper would remain separate.

The Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.*, requires that joint newspaper operating arrangements such as that proposed by the York newspapers have the prior written consent of the Attorney General of the United States in order to qualify for the antitrust exemption provided by the Act. Before granting his consent, the Attorney General must find that one of the publications is a failing newspaper and that approval of the arrangement would effectuate the policy and purpose of the Act.

In accordance with the Newspaper Preservation Act Regulations, published at 28 CFR Part 48, copies of the proposed arrangement and other materials filed by the newspapers in support of the application are available for public inspection in the main offices of the newspapers involved and in the Department of Justice, 633 Indiana Avenue NW., Room 529, Washington, DC 20530.

Any person with views about the proposed arrangement may file written comments stating the reasons why approval should or should not be granted, or requesting that a hearing be held on the application. A request for hearing must set forth the issues of fact to be determined and the reason that a hearing is believed necessary to determine them. Comments shall be filed by mailing or delivering five copies to the Assistant Attorney General for Administration, Justice Management Division, Department of Justice, Washington, DC 20530, and must be received by April 20, 1989.

Replies to any comments filed on or before that date may be filed on or before May 22, 1989.

FOR INFORMATION CONTACT: Janis A. Sposato, General Counsel, Justice Management Division, 202-633-3452.

Date: March 9, 1988.

Harry H. Flickinger,

Assistant Attorney General for Administration.

[FR Doc. 89-6529 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree; Moreau, NY, et al.

Notice is hereby given that a consent decree lodged in *United States of America* v. *Town of Moreau and General Electric Company*, Civil Action No. 88-CV-934 (N.D.N.Y.), was entered by the United States District Court for the Northern District of New York on September 16, 1988. The consent decree resolves the action against the General Electric Company ("GE") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9606, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 94-499, 100 Stat. 1613, ("CERCLA") brought by the United States to enforce a 1983 Administrative Consent Order providing for the remediation of the GE/Moreau waste disposal site.

Pursuant to an order of the Court dated October 20, 1988, the Department of Justice will receive, for 30 calendar days from the date of publication of this notice, written, comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States of America* v. *Town of Moreau and General Electric Co.*, D.J. Ref. No. 90-11-2-278.

The Consent Decree may be examined at the office of the United States Attorney, United States Courthouse, Second Floor, 445 Broadway, Albany, New York 12207, and at the Region II office of the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. A copy of the consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044.

Donald A. Carr

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc.89-6528 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research; Investigation of Effect of Mechanical Aids on the Annular Flow Characteristics in Full Scale Horizontal Wellbores

Notice is hereby given that, on February 9, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("The Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Investigation of Effect of Mechanical Aids on the Annular Flow Characteristics in Full Scale Horizontal Wellbores". The notification discloses (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

1. The parties to the project are:

1. Amoco Production Company
2. Chevron Oil Field Research Company
3. Den Norske Stats Oljeselskap, a.s. (Statoil)
4. Mobil Research and Development Corporation
5. Saga Petroleum, a.s.
6. Texaco, Inc.
7. Weatherford International Incorporated

The purpose of the project is to investigate the effects of mechanical aids on the annular flow characteristics in full scale horizontal wellbores to determine the relative effectiveness of the mechanical aids in primary

cementing operations. The research and development program is designed: to establish, through flow visualization and laser anemometry, the change in annular flow characteristics produced in mechanical aids of various geometric designs, which include flow profile, turbulence and swirl; to establish the distance downstream of the mechanical aid where significant flow modification is sustained for various flow regimes using a large scale annular flow model to be fabricated at SwRI; and to screen candidate mechanical aids in a Newtonian fluid and then conduct a more thorough investigation of the mechanical aids showing the most flow modification using transparent, non-Newtonian slurries that have rheological properties similar to typical cement.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from the Southwest Research Institute, P.O. Drawer 28510, 6220 Culebra Road, San Antonio, Texas 78284.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-6527 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research; PDES Inc

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), PDES Inc. ("PDES") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission on February 16, 1989, disclosing changes to its membership. The additional written notification was filed for the purpose of extending the protections of Section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282).

PDES, with the addition of Computervision Corporation, Digital Equipment Corporation, FMC Corporation, International Business Machines Corporation, Martin Marietta Corporation and Rockwell International Corporation, consists of the following firms: The Boeing Company; Computervision Corporation; Digital Equipment Corporation; FMC Corporation; General Dynamics Corporation; General Electric Company; Grumman Corporation; International Business Machines Corporation; Lockheed Corporation; LTV Aerospace and Defense Company; Martin Marietta Corporation; McDonnell Douglas Corporation; Northrop Corporation; and Rockwell International Corporation.

The nature and objectives of PDES are not affected by the additional Notification.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-6526 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance for Workers; Financial Process for the Revised Trade Adjustment Assistance for workers Program

AGENCY: employment and Training Administration.

ACTION: Final publication of General Administration Letter No. 4-89.

SUMMARY: The Department of Labor puiblishes in final form, General Administration Letter (GAL) No. 4-89 to inform States and cooperating State agencies of the financial policies and procedures for the revised Trade Adjustment Assistance Program, except Trade Readjustment Allowances.

FOR FURTHER INFORMATION CONTACT: Jim Giuliano, U.S. Department of Labor, Employment and Training Administration, Office of the Comptroller, Room C-5317, Washington, DC 20210, (202) 535-8767l; this is not a toll free telephone number.

SUPPLEMENTARY INFORMATION: On August 23, 1988 the President signed into law the "Omnibus Trade and Competitiveness Act of 1988." Part 3—Trade Adjustment Assistance, of Subtitle D of Title I of the Act concerns trade adjustment assistance for workers and firms.

The Department of Labor has issued operating instructions to the States and State agencies concerning trade adjustment assistance for workers. General Administration Letter (GAL) Nos. 7-88, and change 1 to 7-88, and Training and Employment Information Notice (TEIN) Nos. 6-88, and Change 1 to 6-88, and a proposed rule amending the regulations at 20 CFR Part 617 have been published in the **Federal Register.** Also, GAL No. 4-89 and TEIN No. 17-88 were published in the **Federal Register** for a 30-day comment period on January 23, 1989.

The purpose of this publication of GAL No. 4-89 is to transmit the final, national financial policies and procedures with which these trade adjustment assistance activities will be administered.

For this reason, GAL No. 4-89 is published in final form below, together with Training and Employment Information Notice No. 17-88.

Discussion of Comments and Clarifications

No comments were received during the 30-day comment period which ended on February 23, 1989. However, two clarifications need to be made concerning the attachments to GAL 4-89 which were transmitted under separate cover on January 9, 1989. First, the Fiscal Year (FY) 1989 Trade Adjustment Assistance (TAA) Cooperative Agreement must be signed by either the Governor or the Governor's official TAA program designee. Second, the TAA Financial Status Report/Request for Funds (ETA-9023) was approved for use by the Office of Management and Budget (OMB) on February 13, 1989. The OMB approval number of the ETA-9023 is 1205-2075 and the approval is valid through February 29, 1992.

Signed at Washington, DC, on March 15, 1989.

Roberts T. Jones

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE January 9, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 4-89

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK
Administrator
Office of Regional Management

SUBJECT : Financial Process for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To provide information and guidance on the financial process for the revised TAA program activities with the exception of Trade Readjustment Allowances (TRA).

2. References. The Trade Act of 1974, as amended; the Governor/Secretary of Labor Agreement; OMB Circular A-87; 20 CFR Part 617, as amended; and 29 CFR Parts 96, 97, and 98.

3. Background. The Omnibus Trade and Competitiveness Act (OTCA) of 1988 was signed by the President on August 23, 1988. Title I, Subtitle D, Part 3 of OTCA, amended Chapter 2 of Title II of the Trade Act of 1974, Trade Adjustment Assistance for Workers (TAA) Program. As a result of the OTCA amendments and other regulatory changes, several revisions must be made to the financial operation of the TAA program. The most significant changes include:

- o Placing a time limit on the expenditure of funds;
- o Providing advanced funding rather than requiring supplemental budget requests for each instance of need; and
- o Establishing procedures to recapture and redistribute funds among the States.

4. Annual Financial Cooperative Agreement. In order to comply with the provisions of the revised OMB Circular A-102 and the common administrative regulations at 29 CFR Part 97, the revised TAA program will operate under an annual TAA Financial Cooperative Agreement (Attachment). The funding period for this

RESCISSIONS	EXPIRATION DATE September 30, 1990

DISTRIBUTION

annual agreement will be up to three years--the current fiscal year plus the two subsequent fiscal years. Upon a request from the State and concurrence by DOL, the term of this agreement may be extended from one to six months.

The terms and conditions of all prior year TAA grants, agreements, or other vehicles remain in effect for the next two fiscal years, i.e. through September 30, 1990. During this two-year period, States may obligate and expend all prior year funds which remain available. States should obligate and expend all prior year TAA funds before utilizing FY 1989 program funds.

5. Funding. The TAA funding process will consist of quarterly advances to States and supplemental requests for additional funds when the quarterly advances have been committed. This approach of providing funds ensures that States have funds available to provide TAA services on a timely and as needed basis and that States are not accumulating excess, uncommitted fund balances.

Training is an entitlement until such time as the Secretary, pursuant to Section 236(c)(1)(B) of the Trade Act announces that the demand for training is at a level that, if continued, would exceed the $80 million cap for training established in the law. At that time, the law provides that the balance of funds for training be apportioned among the States for the remainder of the fiscal year. States will be notified if and when this occurs.

a. Quarterly Advance. A quarterly advance of program funds will be made to enable States to immediately approve training, job search allowances, and job relocation allowances for certified, eligible workers. For FY 1989, these advances will be based initially on the number of workers in the State receiving TRA in relation to the total number of TRA claimants nationally. The formula factors for future years' quarterly advances are not yet finalized. In addition, each State will receive an amount for administrative costs which will be equal to 15 percent of the program funds advanced to the State. Many States will require funds in addition to the amount provided in these quarterly advances. To obtain additional TAA funds during a quarter, the States must submit a supplemental request for such funds. Adjustments may be made during a quarter to reduce the total amount of funds advanced based on reports submitted for the previous quarter.

b. Supplemental Fund Request. All requests for additional funds shall be for training, job search allowances, and job relocation allowances only. When a request is approved by ETA, an amount equal to 15 percent of the approved program funds will be added automatically for administrative costs. The State shall submit a request for additional funds which includes:

- o A Financial Report containing cumulative financial information as of the most recent month and a narrative justification. This justification should include:
  - The number of workers already approved but not currently receiving Job Search/Relocation allowances or training;
  - The number of additional workers expected to apply and be approved for training, job search allowances, and/or job relocation allowances for the next three months;
  - A description of the conditions which give rise to the particular supplemental fund request;
  - A discussion of the types of training and number of workers currently being funded; and
  - The level of activity expected beyond the three-month period for which this request is made.
- o Certification of this request must be signed by the Governor's official TAA program designee.

All requests for additional funds should be submitted to the Regional Office at least 30 calendar days prior to the date on which the available funds are expected to be exhausted. The request should include the estimated amounts required for each of the three program activities, listed individually, and should be prepared on the basis of projected need covering the next, full three-month period. This request should not include estimates for administration. To the extent that funds are available, States will be provided funds to meet the projected requirements. Adjustments to the next quarter's advance may also be made.

If the funds requested appear to be excessive based on previous usage and other available information including the number of workers certified, then the total funds requested for the three-month period may not be provided pending further review. The Regional Office will be responsible for reviewing, monitoring, and substantiating the information contained in the justification. States should ensure that realistic requests are submitted and that an explanation is provided for any request which is larger than prior experience would indicate.

Similarly, should the Secretary determine that the total amount available may not be adequate to finance nationwide activities over the next three months, it may be necessary to issue reduced

amounts covering a shorter time period. This situation is possible in FY 1989 since the amount presently appropriated is less than estimated requirements.

c. Federal Obligation of Funds. The level of TAA funds provided to States is subject to the availability of appropriated funds. Obligational authority will be issued to States which separately identifies funds available for program activities and for administration. The transfer of funds from program activities to administration is not authorized. However, funds designated for administration may be transferred to program activities if not used for administration.

d. Expenditure of Funds. All TAA funds must be expended by the State in accordance with the provisions of the annual TAA Financial Cooperative Agreement. Any expenditure of funds which does not comply with these provisions will be subject to disallowance.

6. Recapture of funds. The entitlement nature of the TAA program, plus the statutory limitation on the amount of funds which may be expended on training, requires the Department to institute procedures which ensure that States are funded equitably and that the $80 million training cap is not exceeded. Therefore, in addition to the possible actions on supplemental requests for funds discussed previously, the following procedures will be used in the event it becomes necessary to recapture funds not immediately needed by a State and provide them to another State with an immediate need. In general, funds will be recaptured if it is determined that: 1) the National Office reserve is insufficient to meet State requests for additional funds or 2) excess uncommitted funds exist in individual States.

a. Financial Reports will be reviewed regularly to determine whether excess funds remain uncommitted by each State. The determination of what constitutes excess funds will be based primarily on the obligations and commitments incurred to date plus any other program information available, such as approved and pending petitions. Quarterly adjustments to advances will be made based on this review.

b. The recapture of administrative funds will only be considered when the level of program funds recaptured exceeds $200,000. In no case will administrative funds be recaptured which will result in a State being over-obligated in this category.

c. Prior to withdrawing any funds, the State will be notified and provided with an opportunity for comment. This process will require prompt State response.

7. Financial Reporting.

a. States must submit a Financial Report to the Regional Office on a quarterly basis until such time as all funds have been expended or the term of the agreement has expired. Quarterly reports are due 30 days following the end of the quarter. Should the determination be made that available funds will be exhausted nationally before the end of the year, more frequent reporting may be required.

b. A final Financial Report must be submitted 90 days following either the expenditure of all obligational authority or the expiration of the annual TAA Financial Cooperative Agreement, whichever comes first.

c. An updated Financial Report must be included as part of any State request for additional funds.

8. Federal Register Publication. A copy of this General Administration Letter is being published in the Federal Register.

9. State Action. States should ensure that the designated TAA program operating agency is promptly informed of this policy guidance.

10. Inquiries. Inquiries should be directed to the appropriate Regional Office.

11. Attachment.

TAA Financial Cooperative Agreement (to be transmitted under separate cover)

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION TAA
	CORRESPONDENCE SYMBOL TSCS
	DATE January 9, 1989

TRAINING AND EMPLOYMENT INFORMATION NOTICE NO. 17-88

TO : ALL STATE JTPA LIAISONS
STATE WAGNER-PEYSER ADMINISTERING AGENCIES
WORKER ADJUSTMENT LIAISONS

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Financial Policy for the Revised Trade Adjustment Assistance (TAA) Program

1. Purpose. To transmit information on the financial policy for the revised TAA program.

2. Background. As a result of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 amending the Trade Act and the issuance of other regulatory changes, several revisions to the financial operation of the TAA program were required. The most significant changes include:

- o Placing a time limit on the expenditure of funds;
- o Providing advanced funding rather than requiring supplemental budget requests for each instance of need; and
- o Establishing procedures to recapture and redistribute funds among the States.

The details regarding these changes were recently published in the attached General Administration Letter (GAL) No. 4-89 and in the Federal Register.

3. Action. The attached information should be provided to appropriate staff as soon as possible.

4. Inquiries. Inquiries should be directed to the appropriate Regional Office.

5. Attachment. GAL NO. 4-89

RESCISSIONS	EXPIRATION DATE

DISTRIBUTION

[FR Doc. 89-6567 Filed 3-20-89; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-20)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register Citation of Previous Announcement: 54 FR 9264, Notice Number 89-15, March 6, 1989.

Previously Announced Times and Dates of Meeting: March 21, 1989, 8 a.m. to 4 p.m.; and March 22, 1989, 8 a.m. to 4 p.m.

Changes in the Meeting: Dates and Times changed to March 30, 1989, 8 a.m. to 4 p.m.; and March 31, 1989, 8 a.m. to 2 p.m.

Contact Person for More Information: Mr. David Stone, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-3654.

Philip D. Waller,

Director, General Management.

March 16, 1989.

[FR Doc. 89-6680 Filed 3-20-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards; Solicitation for Comments

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1070, "Telecommunications: Detail Specification for 62.5-mm Core Diameter/125-mm Cladding Class Ia Multimode, Graded-Index optical Waveguide Fibers."

DATE: Comments are due by June 30, 1989.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20304-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Frank M. McClelland, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications system (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer-communication interface.

2. Prior to adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the proposed FED-STD-1070 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 89-6563 Filed 3-20-89; 8:45 am]

BILLING CODE 3610-05-M

Meeting of Industry National Executive Subcommittee of the National Security Telecommunications Advisory Committee

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Wednesday, May 10, 1989. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, VA. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and Government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692-9274 or write the Manager, National Communications System, Washington, DC 20305-2010.

Terrence N. Danner,

Captain, USN Assistant Manager NCS Joint Secretariat.

[FR Doc. 89-6562 Filed 3-20-89; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL SCIENCE FOUNDATION

Materials Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520.

OMB Desk Officer: Written comments to: Office of Information and Regulatory Affairs, ATTN: Jim Houser, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: National Science Foundation Proposal/Award Information.

Affected Public: Individuals, state and local governments, businesses or other for profit, non-profit institutions, and small businesses or organizations.

Responses/Burden Hours: 37,000 respondents, 120 burden hours each.

Abstract: The National Science Foundation supports research in all scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, and other research organizations. These awards are based on proposals submitted to the Foundation.

Dated: March 16, 1989.

Herman G. Fleming,

NSF Clearance Officer.

[FR Doc. 89-6609 Filed 3-20-89; 8:45 am]

BILLING CODE 7555-01-M

Amended Meeting Notice, April 10-11, 1989

The National Science Foundation announces that the meeting of the Advanced Scientific Computing Advisory Panel is being amended to provide for an open session on the morning of April 10, 1989.

Name: Advisory Panel for Advanced Scientific Computing

Date and time:

April 10—8:00 A.M.-5:00 P.M.

April 11—8:00 A.M.-3:00 P.M.

Place: Room 1242, National Science Foundation, 1800 G Street N.W.

Type of meeting:

Open

April 10—8:00 A.M.-12:00 Noon

Closed

April 10—1:30 P.M.-5:00 P.M.

April 11—8:00 A.M.-3:00 P.M.

Contact person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, Room 417, National Science Foundation,

Washington, DC Telephone: 202/357–7558

Summary minutes: May be obtained from Contact Person

Purpose of meetings: To provide advice and recommendations concerning NSF support of advanced scientific computing

Agenda:

Open

- DASC Overview
- CISE Overview
- NSF Director's Presentation
- Discussion of Post Doctoral Program

Closed: Discussion of Centers Renewal Proposals

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

March 17, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–6611 Filed 3–20–89; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee On Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 22, 1989 (54 FR 7618). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetins and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1989 ACRS full Committee and the ACNW meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492–7288, ATTN: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint Materials and Metallurgy and Structural Engineering, March 23, 1989, Bethesda, MD. The Subcommittees will review the proposed amendment to the pressurized thermal shock (PTS) rule updating the formula given in the PTS rule for calculating the level of radiation embrittlement in reactor vessel beltline, and the staff's position on reactor support embrittlement.

Mechanical Components, March 29, 1989 (a.m.), Bethesda, MD. The Subcommittee will continue its review of the NRC staff's generic letter on MOV reliability.

Instrumentation and Control Systems, March 29, 1989 (p.m.), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 101, "BWR Water Level Redundancy."

Maintenance Practices and Procedures, March 30, 1989, Bethesda, MD. The Subcommittee will review the proposed maintenance rule and the related Regulatory Guide.

Thermal Hydraulic Phenomena, April 5, 1989 (p.m. only), Bethesda, MD. The Subcommittee will review the final report of the joint NRC/B&W Owners Group/EPRI Technical Advisory Group on the need for additional thermal hydraulic testing of B&W OTSGs.

Instrumentation and Control Systems, April 5, 1989 (p.m.), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 115, "Enhancement of Reliability of the Westinghouse Solid State Protection Systems."

Improved Light Water Reactors, April 11–12, 1989, Palo Alto, CA. The Subcommittee will review Chapters 1–5 and preview Chapters 6–9 of the EPRI ALWR Requirements Document.

Joint Containment Systems and Structural Engineering, April 18, 1989, Bethesda, MD. The Subcommittees will discuss with the NRC staff current containment design criteria and plan future subcommittee action to develop containment criteria for future plants.

Human Factors, April 19, 1989, Bethesda, MD. The Subcommittee will review the human factors program plan.

Occupational and Environmental Protection Systems, April 20, 1989, Bethesda, MD. The Subcommittee will review the proposed interim standard for occupational exposure of the skin to beta radiation from small radiactive particles (hot particles).

Instrumentation and Control Systems, April 21, 1989, Bethesda, MD. The Subcommittee will review the implementation status of the ATWS rule.

Limerick 2, April 25, 1989, Philadelphia, PA. The Subcommittee will review the application of the Philadelphia Electric Company for a license to operate Limerick Unit 2.

Materials and Metallurgy, April 27, 1989, Palo Alto, CA. The Subcommittee will discuss the status of the following matters: Erosion/corrosion of pipes, hydrogen/water chemistry, zinc addition to the primary coolant loop and its effects on materials, decontamination effects on materials, and other related matters.

Plant Operating Procedures, May 9, 1989 (tentative), Bethesda, MD. The Subcommittee will review the status of the NRC program on Technical Specifications update. Also, it will review an anonymous letter to Ms. E. Weiss (Union of Concerned Scientists), dated September 27, 1988, on Technical Specification inadequacies.

General Electric Reactor Plants (ABWR), May 10–11, 1989, Bethesda, MD. The Subcommittee will continue its review of the GE ABWR. The Subcommittee will also preview Chapters 1, 8, 9, 11, 12, 13, 14 and 17 of the Safety Analysis Report related to GE ABWR.

Materials and Metallurgy, May 25, 1989, Bethesda, MD. The Subcommittees will review low upper shelf fracture energy concerns of reactor pressure vessels.

Joint Regulatory Activities and Containment Systems, July 12, 1989, Bethesda, MD. The Subcommittee will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Extreme External Phenomena, Date to be determined (April), Bethesda, MD. The Subcommittee will review planning documents on external events.

Advanced Pressurized Water Reactors, Date to be determined (May), Bethesda, MD. The Subcommittee will discuss the comparison of WAPWR (RESAR SP/90) design with other modern plants (in U.S. and abroad).

Regulatory Policies and Practices, Date to be determined (May), Bethesda, MD. The Subcommittee will review a proposed draft rule on nuclear plant license extension.

Advanced Pressurized Water Reactors, Date to be determined (May/June), Bethesda, MD. The Subcommittee will discuss the licensing review bases document being developed for Combustion Engineering's Standard Safety Analysis Report-Design Certification (CESSAR–DC).

AC/DC Power Systems Reliability, Date to be determined (May/June), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 128, "Electrical Power Reliability."

Thermal Hydraulic Phenomena, Date to be determined (May/June), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Decay Heat Removal Systems, Date to be determined (May/June), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (May/June), Bethesda, MD. The Subcommittees will review the implication of the core power oscillation event at LaSalle, Unit 2.

Joint Severe Accidents and Probabilistic Risk Assessment, Date to be determined (May/June), Location to be determined. The Subcommittees will discuss the second draft of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Auxiliary and Secondary Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the adequacy of the staff's proposed plans to implement the recommendations resulting from the Fire Risk Scoping Study and other matters related to fire protection systems.

Severe Accidents, Date to be determined (July/August), Bethesda, MD. The Subcommittee will discuss the NUMARC Accident Management guideline document and the NRC research program in the accident management area.

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems, Date to be determined, Bethesda, MD. The Subcommittee will discuss the: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

ACRS Full Committee Meetings

348th ACRS Meeting, April 6–8, 1989—Items are tentatively scheduled.

*A. *Maintenance of Nuclear Plants* (Open) (Tentative)—Review and comment on proposed rule and Regulatory Guide regarding maintenance programs at nuclear power plants.

*B. *Risk Assessment* (Open) (Tentative)—Discuss proposed uses of NUREG–1150, "Severe Accident Risk: An Assessment for Five U.S. Nuclear Power Plants."

*C. *Pressurized Thermal Shock* (Open)—Review and comment on the proposed amendment to the pressurized thermal shock (PTS) rule.

*D. *Generic Issue 101* (Open)—Review and comment on proposed resolution of Generic Issue 101, "BWR Water Level Redundancy."

*E. *Reactor Pressure Vessel Supports* (Open)—Review and comment on proposed resolution of problems associated with embrittlement of reactor pressure vessel supports (ORNL/TM–10966).

*F. *Meeting with Director, NRR* (Open)—Discuss items of mutual interest, including NRC activities regarding containment performance requirement.

*G. *Emergency Response Data System* (Open)—Information briefing regarding proposed generic letter to nuclear plant licensees.

*H. *Future Activities* (Open)—Discuss anticipated subcommittee and full committee activities as well as the division of work responsibility between the ACNW and ACRS.

I. *Appointment of ACRS Members* (Closed)—Discuss the status of appointment of ACRS members and the qualifications of nominees proposed as candidates for appointment to the Committee.

*J. *ACRS Subcommittee Activities* (Open)—Hear and discuss status reports of cognizant ACRS subcommittees regarding designated activities including consideration of degraded piping in nuclear power plants.

*K. *Generic Issue 115* (Open) (Tentative)—Review and comment on the proposed resolution of Generic Issue 115, "Enhancement of Westinghouse Solid State Protection Systems."

*L. *Generic Issue 103* (Open) (Tentative)—Review and comment on proposed resolution of Generic Issue 103, "Design for Probable Maximum Precipitation."

*M. *Performance Indicators* (Open)—Discuss the status of performance indicators' program.

*N. *B&W OTSG Thermal Hydraulic Research Program* (Open)—Discuss NRC/Industry proposed thermal hydraulic research program for B&W OTSG.

349th ACRS Meeting, May 4–6, 1989–Agenda to be announced.

350th ACRS Meeting, June 8–10, 1989—Agenda to be announced.

ACNW Full Committee Meetings

9th ACNW Meeting, April 26–28, 1989—Items are tentatively scheduled.

1. *Meeting with the Commission* (Open)—The Committee will meet with the Commission to discuss a variety of topics, such as:

—Meeting with DOE/NRC/State of Nevada on CDSCP and SCP Review Plan
—West Valley Demonstration Project
—Division of High-Level Waste Management FY 89 Program
—Deletion of § 20.205 from the proposed revision of 10 CFR Part 20
—Greater-Than-Class-C radioactive waste
—Other items identified by the Commission

2. *Mixed Waste* (Open)—The Committee will be briefed on the issues involved in the disposal of wastes that contain both hazardous and radioactive constituents.

3. *Post Closure Seals* (Open)—The Committee will be briefed on the technical position on post closure seals in unsaturated media.

4. *Center for Nuclear Waste Regulatory Analyses* (Open)—The Committee will be briefed on the latest activities at the Center for Nuclear Waste Regulatory Analyses.

5. *Licensing Support System* (Open)—The Committee will be briefed on the development of the Licensing Support System for the High-Level Waste Repository.

6. *Update on the Site Characterization Plan* (Open)—The Committee will be briefed on the status of the NRC review of the SCP.

7. *Petitions for Disposal of Radioactive Waste Streams Below Regulatory Concern* (Open)—The Committee will discuss the procedures and schedule proposed by the NRC staff for the expeditious handling of petitions.

8. *Waste Confidence Review Group* (Open)—The Committee will meet with the NRC staff to discuss the findings of the waste confidence review group.

9. *Committee Activities* (Open/Closed)—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

Date: March 16, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-6581 Filed 3-20-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1113]

General Electric Co.; Wilmington, NC Facility; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support has granted in part and denied in part a peitition under 10 CFR 2.206 filed by Anthony Z. Roisman and Mozart G. Ratner on behalf of Vera M. English (Petitioner). In her petition, Mrs. English requested imposition of a civil penalty in the amount of $40,635,000 upon General Electric (GE), plus $37,500 per day for every day after April 6, 1987, that GE does not take corrective action, and imposition of a license condition upon GE requiring the Licensee to fully compensate Mrs. English for her economic losses in the past and future resulting from GE's alleged discrimination, for medical expenses entailed as a result of the alleged discrimination, for expenses incurred in "fighting GE", and for "physical and mental pain she has endured" as a result of GE's actions.

The Petitioner's request that enforcement action be taken against GE has been granted. As a result of this decision, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $20,000 is also being issued. However, the petitioner's requests that the NRC impose a civil penalty in the amount of $40,635,000 plus $37,500 per day for each day after April 6, 1987 and that the NRC impose a license condition upon GE requiring the Licensee to compensate Mrs. English for her expenses and losses are denied. Furthermore, the Petitioner's request as set forth in her December 13, 1984 petition that the NRC take enforcement action against GE based upon certain other alleged instances of wrongdoing is also denied.

The reasons for this decision are fully described in the "Director's Decision Under 10 CFR 2.206," issued on this date, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Dated at Rockville, Maryland this 13th day of March 1989.

[FR Doc. 89-6585 Filed 3-20-89; 8:45 am]

BILING CODE 7590-01-M

Guidance on Management Controls/Quality Assurance, Requirements For Operation, Chemical Safety, and Fire Protection for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Proposed guidance to applicants and licensees for preparation of applications for licenses and conduct of operations; public comment.

SUMMARY: This notice proposes guidance in the form of four Branch Technical Positions on management controls/quality assurance, requirements for operation, chemical safety, and fire protection for fuel cycle facilities. The Branch Technical Positions will be administered by the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

DATES: Comments on the proposed guidance are encouraged. Such comments will be considered in finalizing the Branch Technical Positions. Comments are due May 22, 1989.

Note.—Comments received after the expiration date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before that date.

FOR FURTHER INFORMATION CONTACT: Leland C. Rouse, Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, (301) 492-3328.

SUPPLEMENTARY INFORMATION: Section 70.22 (Contents of Applications) and § 70.23 (Requirements for the Approval of Applications) of 10 CFR Part 70 contain subsections which provide applicant information requirements and Commission approval requirements related to equipment, facilities, and procedures that will be used to protect health and minimize danger to life or property. (Similar provisions are contained in Parts 30, 40, and 72.) These requirements are necessarily general, for they must be applicable to a variety of nuclear fuel cycle activities. Over the years, the Commission staff has developed different types of guidance to supplement the general requirements. These have taken the form of Regulatory Guides, Standard Format and Content documents, and Branch Technical Positions. In addition, applicants' and the staff's experience with applications and licenses has evolved into a reasonable understanding of what information should be provided and what will be approved.

Notwithstanding the supplementary guidance provided to expand and explain the general requirements, there have been certain topics for which guidance has not been provided at all, or provided in less than completely adequate form. The staff had been working on numerous suggestions and recommendations, made both inside and outside of the Commission, for improving the regulation of radioactive materials, especially after the January 4, 1986 accident at the Sequoyah Fuels Corporation's uranium hexafluoride conversion facility. As one result of this accident, the NRC's Executive Director for Operations established the Materials Safety Regulation Review Study Group (MSRRSG) in May 1986. The MSRRSG recommendations covering the licensing and inspection program were not unique, and as mentioned above, were already in various stages of consideration or implementation.

One group of the MSRRSG recommendations dealt with administrative aspects of NRC operations, including organizational changes, training, procedures, and schedules. Most of these were addressed as a part of the NRC reorganization in April 1987. Others have been and are continuing to be pursued in the context of the new organization. The other group of MSRRSG recommendations related to radiation and industrial safety concerns, e.g., nonradiological hazards, emergency preparedness, and radiography safety. The last two have been handled by separate rulemaking actions.

During the same period of time that the MSRRSG report was being prepared and evaluated, the staff undertook a series of team assessments of operational safety at the major fuel facilities licensed by the NRC. These assessments were conducted by Regional and Headquarters NRC staff, as well as OSHA and EPA personnel in most cases, and FEMA in two of the assessments. The most important safety issues identified as needing attention by

licensees were in the areas of fire protection, chemical hazards identification and mitigation, management controls/quality assurance, safety-related instrumentation and maintenance, and emergency preparedness. These findings contributed to and support the staff's position on the MSRRSG recommendations. Likewise, the recommendations contained in the Lessons Learned Report from the Sequoyah Fuels Corporation accident (NUREG–1198) and the U.S. House of Representatives' Committee on Government Operations report, "NRC's Regulation of Fuel Cycle Facilities: A Paper Tiger," were consistent with the findings.

As a first step toward making improvements in the identified areas of management controls/quality assurance, requirements for operation, chemical safety, and fire safety, Branch Technical Positions have been prepared for guidance. It is the NRC's intent that the guidance will later be incorporated, along with other topics, in license application standard format and content documents. These documents in turn would be used in the preparation of standard review plans for the safety of major fuel cycle facilities. Branch Technical Positions provide guidance to applicants and licensees for preparation of applications for licenses and conduct of operations and provide guidance for the staff in reviewing applications and inspecting facilities. However, Branch Technical Positions do not carry the force of regulation; and other equipment, facilities, and procedures may be acceptable for meeting regulatory requirements. For each of the Branch Technical Positions which follow, the background of each issue is described, including a definition of the issue and its general applicability. A discussion section includes the objectives of the Branch Technical Position and the principles to be used. A position section describes specific guidance but not methods of implementation at this time. Finally, references used in development of the Branch Technical Positions are listed.

BRANCH TECHNICAL POSITION ON MANAGEMENT CONTROLS/ QUALITY ASSURANCE FOR FUEL CYCLE FACILITIES

I. Introduction

Team assessments of operational safety at major fuel cycle facilities, which were conducted following the accidental release of uranium hexafluoride at Sequoyah Fuels Corporation in January 1986, identified management controls as one of the most important issues needing attention by licensees. In the staff paper to the Commission (SECY–87–189), in which the team assessments were discussed, the staff concluded that fuel cycle licensees should specify management controls programs covering all aspects of facility operations, including design and construction, procedures, maintenance, training, and audits. The purpose of this Branch Technical Position is to describe a management controls/quality assurance program which licensees should use to improve operational safety.

II. Discussion

The purpose of management controls is to provide confidence that measures taken to achieve safe, reliable facility operations remain effective and that operations remain safe.

This confidence will be obtained from a management controls program which:

- Provides methods for seeking out and identifying items and activities important to safety and recognizes their potential significant failures.
- Establishes procedures for tests and inspections, surveillance, and maintenance to provide protection against potential failures.
- Provides feedback to confirm and verify program achievement and evaluates and assesses program effectiveness.

The following are the essential items that should be included in the management controls system. A discussion of each is provided.

A. Organization

The organizational structure established by management for fuel cycle facilities should provide for execution of the management controls functions.

B. Plant Safety Committee

Management should establish a plant safety committee(s) or equivalent function, whose duties and responsibilities include matters such as review and approval of operating plans and procedures, design changes, nonconformances and corrective actions, audits, and training programs.

(One of) the committees should have established procedures for systematic review of proposed changes to procedures, equipment, tests, or processes to determine that such changes can be made by the licensee or whether NRC approval is required.

C. Plant Procedures

Licensees should have two basic types of procedures—administrative and general plant procedures. Administrative procedures address the process of planning, administrative controls, and document issuance; and provide rules and instructions on personnel conduct, preparation and retention of plant documents, and interfaces among plant organizations. General plant procedures prescribe the actions required to achieve safe operation and provide instructions for the operation and maintenance of plant activities and support systems. General plant procedures should include measures for controlling chemical, radiological, nuclear criticality, and fire hazards. Licensees should provide management controls governing the establishment, maintenance, and use of all procedures.

D. Tests and Inspections

Surveillance, tests, and inspections of items and activities important to safety should be conducted in accordance with written procedures which identify requirements and acceptable limits. Pre-operational tests demonstrate plant operability and identify conditions adverse to safety. Tests during operations will verify and record the characteristics of various plant equipment and components. Surveillance, tests, and inspections, if required, should be performed to assure functionality of items and activities after modification or when corrective actions have been completed. Licensees should provide management controls governing the establishment, maintenance, and use of surveillance, tests, and inspections.

E. Audits

Planned and scheduled internal and external audits should be performed to evaluate the application and effectiveness of management controls and implementation of programs related to activities significant to plant safety. Audits should be conducted following approved procedures and instructions, and by qualified personnel who are not involved with the activity. The audit schedules and the audit personnel qualifications should be determined by management.

Audit results should be conducted and then reviewed by designated management. Deficient conditions requiring actions should be followed by management, and re-audited as necessary. Audit reports should be distributed to appropriate management and organizations for review and information.

F. Training

Training programs help to assure that employees have the necessary skills and knowledge to perform the assigned duties safely. All employees should be trained in their areas of responsibility and as applicable, in management controls, nuclear criticality safety, radiological safety, chemical safety, and fire protection. Effectiveness of the training programs should be evaluated periodically.

III. Position

To assure confidence in the safe operation of fuel cycle facilities, the following steps should be taken:

A. Licensees should establish an organization responsible for developing, implementing, and assessing the management controls program for assuring safe facility operation.

B. Licensees should establish a plant safety committee(s) to monitor and oversee important plant activities and changes. The committee should include, as a minimum, management representatives from production, engineering, and safety functions.

C. Licensees should develop written administrative and general plant procedures, including procedures for evaluating changes to procedures, equipment, tests, and processes. Such procedures should be reviewed, approved, and documented in a manner approved by management.

D. Licensees should establish and implement a surveillance, test, and inspection program to assure satisfactory inservice performance of items and activities affecting safety. Procedures which set forth the specified standards or criteria and detailed testing steps should be developed.

E. Licensees should provide for periodic independent audits to determine the effectiveness of the management controls program. Management controls should provide for documentation of audit findings and implementation of corrective actions.

F. Licensees should establish and implement training programs to provide employees with the skills and knowledge to perform their jobs safely. Management controls should provide for the evaluation of the effectiveness of training programs against predetermined objectives and criteria.

IV. References

ANSI N299–1979, "Administrative and Managerial Controls for the Operation of Nuclear Fuel Reprocessing Plants."

Regulatory Guide 3.52, "Standard Format and Content for the Health and Safety Sections of License Renewal Applications for Uranium Processing and Fuel Fabrication," Revision 1, November 1986.

ANSI/ASME NQA–1 1986, "Quality Assurance Program Requirements for Nuclear Facilities."

ANSI/ASME N45.2 1977, "Quality Assurance Program Requirements for Nuclear Facilities."

ANSI/ANS 3.2 1982, "Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants."

Branch Technical Position on Requirements for Operation for Fuel Cycle Facilities

I. Introduction

The Materials Safety Regulation Review Study Group (MSRRSG) recommended that the NRC expand its licensing and inspection procedures to ensure a comprehensive review of all aspects of fuel cycle licensees' activities important to safety. The MSRRSG concluded that this review should cover the calibration, maintenance, and performance of all systems employed for achieving nuclear criticality safety, radiation safety, process safety, and confinement of radioactive or other hazardous materials.

During the time that the MSRRSG report was being prepared, the staff conducted a number of team assessments of operational safety at the major fuel cycle facilities under NRC jurisdiction. These assessments identified safety-related instrumentation and maintenance as areas needing attention by licensees.

Based on the MSRRSG recommendation and team assessment findings, a Branch Technical Position on Requirements for Operation, which addresses instrumentation and controls and preventative maintenance and surveillance, has been developed. This position applies to all facility activities where nuclear criticality safety, radiation safety, process safety, and confinement of both hazardous and radioactive materials must be assured.

Some licensees already utilize instrumentation and control systems and preventative maintenance and surveillance programs to help assure safe operations. The purpose of this Branch Technical Position is to address the use of these systems and programs and to assist all licensees in the development of comprehensive Requirements for Operation.

II. Discussion

Requirements for Operation are defined as instrumentation and control systems and preventative maintenance and surveillance programs necessary for safe operation of a facility to protect workers, the public health and safety, and the environment. Safety analyses of facility operations can be performed to identify both potential hazards and limiting specifications for the appropriate parameters of those operations which must be controlled. Instrumentation and control systems and/or preventative maintenance and surveillance programs can then be provided, and these systems and programs become the Requirements for Operation for the facility.

Instrumentation and control systems provide the capability for monitoring operational parameters that are important to safety. All instruments and controls required for safe operation should be failure-indicating or should be backed up by other instruments and controls that can serve the same function. These systems also may initiate actions to help assure that acceptable operating specifications are not exceeded. These actions may include automatic activation of alarms, valves, ventilation dampers, or other safety-related equipment. Automatically activated systems should fail into a safe state.

Preventative maintenance and surveillance programs provide means to monitor operational parameters that are not suitable for direct control by instrumentation and control systems. Preventative maintenance and surveillance also are used to provide assurance that all instrumentation and control systems continue to function as required.

Several examples to illustrate the development of Requirements for Operation for typical facility operations and activities are described below. The examples include use of both instrumentation and control systems and preventative maintenance and surveillance programs.

A. Process Systems

A common process system is the conversion of low-enriched uranium hexafluoride (UF_6) to uranyl fluoride (UO_2F_2) using steam. Two of the process safety controls are described as Requirements for Operation.

For purposes of nuclear criticality safety, the UO_2F_2 must remain essentially dry (moderation control). To maintain dry conditions, condensation of steam in the presence of UO_2F_2 must be prevented by introducing only superheated steam into the preheated reaction vessel. Therefore, a Requirement for Operation is an instrumentation and control system to

detect low steam or vessel temperature and to automatically terminate flow of UF_6 and steam into the reaction vessel.

For environmental protection, the UF_6 gas must be prevented from reaching and penetrating the process off-gas system (filters). To accomplish this, the UF_6 gas introduced into the process vessel must be completely converted to UO_2F_2 powder. Therefore, a Requirement for Operation is an instrumentation and control system to detect a non-stoichiometric ratio of UF_6 to steam flows and to terminate flow of UF_6 and steam into the reaction vessel if an unsafe ratio is detected.

B. Auxiliary Chemical Systems

An example of an auxiliary chemical system is the storage of chemicals sufficiently close to operations to create an uninhabitable environment in the event of a tank rupture. To prevent tank rupture, the pressure of the tank must be controlled. Therefore, a Requirement for Operation is a pressure relief device to prevent rupture and/or to allow for controlled releases. If other means to prevent tank rupture are not used, redundant systems such as backup relief valves should be provided.

C. Fire Protection System

Fire protection water should be available at all times to the facility. Both water pressure and flow are important to help assure that this water is provided. Therefore, the Requirements for Operation are a low pressure detection and alarm device and periodic water flow/pressure testing.

D. Ventilation and Effluent Control Systems

Workers performing activities require protection against the inhalation of radioactive material (airborne contamination). For certain activities, a local exhaust hood with a face velocity sufficient to confine the airborne contamination provides such protection. Requirements for Operation are periodic measurement of the hood face velocity and administrative suspension of the activity until the required face velocity is restored.

E. Utilities

Power must be provided to certain safety systems at all times. An emergency generator is one way of assuring that power to the safety systems is maintained if primary power is lost. Therefore, Requirments for Operation are periodic startup tests and preventative maintenance of the emergency generator.

III. Postion

Licensees should perform safety analyses of facility operations to identify potential hazards, operational parameters, and limiting specifications for these parameters.

Based on the results of the safety analyses, licensees should establish and document the basis for Requirements for Operation.

Licensees should establish programs for testing, calibration, and inspection of all instrumentation and control systems to assure their reliability.

Licensees should establish management controls to establish and monitor the effectiveness of the Requirements for Operation programs.

Branch Technical Position on Chemical Safety For Fuel Cycle Facilities

I. Introduction

Most NRC fuel cycle licensees possess materials that are chemically hazardous, that pose some sort of non-radiological risk. In the past, the NRC has been concerned mainly with radiological risks and has left the regulation of chemical risks to the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and corresponding state-level authorities. While these agencies still have principal responsibility for chemical safety, several recent developments have led us to re-evaluate the boundary between chemical and radiological safety and to reconsider the reach of the NRC's regulatory activities into the area of chemical safety.

A fuller awareness has developed, particularly since the January 1986 accident at the Sequoyah Fuels Corporation, that chemical and radiological risks can compound one another and that in any case, many radioactive materials are chemically hazardous. A chemical explosion in a fuel cycle facility could disperse radioactive material, just as the radiation environment could make it more difficult to respond to a hazardous chemical spill. In the Sequoyah accident, a uranium hexafluoride cylinder ruptured and exposed the cylinder's contents to water vapor in the air, leading to the release of clouds of hydrofluoric acid vapor and uranyl fluoride particulates. The uranium hexafluoride and uranyl fluoride were radioactive, but the most serious problem was the release of highly corrosive hydrofluoric acid which, in fact, killed one worker. This is the best example of the type of risk that this Branch Technical Position (BTP) aims to address.

It has become clear that other federal and state agencies, even when having legal jurisdiction over chemical safety at fuel cycle facilities, are in practice inclined to leave NRC licensees to the NRC. OSHA, for example, has responsibility for a huge number of workplaces but deploys only a modest number of inspectors. A draft Memorandum of Understanding between the NRC and OSHA recognizes this situation and makes provision for the NRC's inspectors, who visit all fuel cycle licensees regularly, to assume more responsibility for identifying unsafe working conditions and alerting the appropriate OSHA regional offices.

A somewhat similar situation exists with regard to toxic wastes, air pollutants, and other environmentally-hazardous chemicals. EPA and its state-level counterparts have jurisdiction over these materials, but the NRC has more of a presence in fuel cycle facilities and can help to ensure that the many federal environmental regualtions are followed. The Federal Water Pollution Control Act, the Clean Air Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act (a.k.a. "Superfund"), and the Emergency Planning and Community Right-to-Know Act have created a whole new framework for regulating the environmental impact of fuel cycle facilities, going far beyond the concentration limits of 10 CFR Part 20 for radionuclides release to the environment.

In the aftermath of the Sequoyah accident, the Materials Safety Regulation Review Study Group recommended that the NRC evaluate the scope of its regulatory authority over chemically-harardous substances and work with other responsible agencies to ensure that there are no regulatory gaps. Four categories of chemical risks were defined in order to clarify the NRC's responsibilities. The categories are:

A. Radiation risk posed by radioactive materials,
B. Chemical risk posed by radioactive Materials,
C. Plant conditions that may directly or indirectly affect radiation risk, and
D. Chemical risk posed by nonradioactive materials.

The first three categories are the NRC's direct responsibility. NRC is not the primary responsible agency for the fourth category and has no intention of formulating regulations in this area, but will work with OSHA, EPA, and other agencies as appropriate, to help ensure that fuel cycle licensees conform to all

federal regulations. The purpose of this BTP is to describe actions to control the first three categories of risks.

II Dissussion

The four basic categories of risks listed in the Introduction require some further definition, both to help licensees better understand the materials of concern in this BTP and to better match the risk categories with existing federal regulations. The general category of "chemcial risk," for example, can cover the risks posed by many different types of hazards. Some chemicals pose a risk to workers; others pose an environmental risk; some pose both. Some chemical risks could have acute consequences, such as a worker dying in a fire or explosion. Other risks could have chronic consequences, such as a worker suffering health effects from long-term exposure to a carcinogenic material. The following paragraphs define categories of risks, suggest some practical examples from fuel cycle facilities, and identify applicable federal regulations to which licensees are subject.

A. Radiation Risks Posed by Radioactive Materials

These risks are already explicitly subject to NRC regulation and are not a subject of this BTP.

B. Chemical Risks Posed by Radioactive Materials

One type of chemical risk posed by radioactive materials is the risk that a radioactive material may be the cause of a severe chemical accident. This would cover risks posed by radioactive materials that are explosive, flammable, highly reactive, or handled under high temperatures or pressures.

An example would be the risks involved in handling uranium hexafluoride cylinders. Uranium hexafluoride is a highly reactive chemical known to react rapidly with water, inlcuding the water vapor in normal air, to produce hazardous hydrofluoric acid vapors and uranyl fluroride particulates. An accidental release of uranium hexafluoride would pose an acute threat to the safety of nearby workers. Uranium hexafluoride is normally stored and transported in airtight cylinders. The tendency of uranium hexafluoride to expand dramatically when heated means that a cylinder filled beyond normal limits poses a significant danger of rupture or explosion, which could cause direct injury to workers in addition to releasing hazardous gases.

Another radioactive material that could pose chemical risks of this type is uranyl nitrate. Uranyl nitrate is normally in a strong solution of nitric acid, so a spill could cause serious acid burns or, if a strong base is stored nearby, lead to violently exothermic reactions. Furthermore, when uranyl nitrate is overheated it can release toxic nitrogen oxides.

NRC is the principal agency responsible for the safety of radioactive materials handled in fuel cycle facilities, whether radiation safety or chemical safety. But some existing federal regulations on chemical safety may be applicable to radioactive materials. OSHA regulations in 29 CFR 1910, 101–.120 cover safety procedures that should be followed in handling flammable liquids, compressed gases, and some other types of hazardous materials.

A second type of chemical risk could be posed by the chemical toxicity of some radioactive materials. The concern of this BTP is the possibility that some radioactive compounds may be more toxic because of their non-radioactive components than because of the radioactivity. For example, 10 CFR Part 20 limits for soluble natural uranium are based on its chemical toxicity. Insoluble natural uranium is less toxic chemically, and the 10 CFR Part 20 exposure limits for insoluble natural uranium are based on its radiation hazards. Many chemicals are more hazardous than insoluble uranium as airborne toxins, and a few are more hazardous even than soluble uranium. If these chemicals were present in radioactive compounds, the airborne exposure limits of 10 CFR Part 20 could well be less stringent than existing federal regulations on occupational exposure to airborne chemicals, such as 29 CFR 1910.1000.

A third type of chemical risk would be the risk to the environment or to public health and safety posed by a large, accidental release of a radioactive material with dangerous chemical properties. The radiation hazards arising from an accidental release of radioactive material are covered by existing NRC regulations, but in some cases, the chemical properties of the released substance may pose more of a risk than its radiation properties. For example, an accidental release of uranium hexafluoride would generate a plume of hydrofluoric acid when the uranium hexafluoride reacts wtih airborne water vapor. The hydrofluoric acid would probably be a greater hazard to nearby residents than uranyl fluroide, the radioactive byproduct of the accident. As another example, a spill of solvent extraction organic (normally a solution of tri-butyl phosphate in dodecane) could cause serious local water pollution unrelated to the amount of uranium it contains.

Existing EPA regulations would apply to an accidental release of chemically hazardous radioactive materials. 40 CFR Parts 116–117, derived from the Federal Water Pollution Control Act of 1978, identifies chemicals that can be hazardous water pollutants and establishes requirements for reporting releases to the EPA. The Toxic Substances Control Act regulations, 40 CFR Parts 702–799, would govern licensees handling certain types of toxic chemicals.

C. Plant Conditions Which May Directly Or Indirectly Affect Radiation Risk

This category of risk covers plant conditions related to the presence of hazardous chemicals on or near a fuel cycle site that could affect radiation safety. One concern would be the risk posed by the presence of flammable or explosive chemicals near radioactive materials or near essential facilities for the control and containment of radioactive materials. If a flammable or explosive chemical were involved in an accident under these circumstances, the dispersal of radioactive material or loss of control over radioactive material could make the accident much more serious than would otherwise be the case. This concern would apply not only to flammable or explosive chemicals that are possessed by the fuel cycle licensee, but also to such chemicals in the possession of others that are located sufficiently close to the fuel cycle facility, such that a major fire or explosion could affect the safety of licensed material.

The safety regulations of 29 CFR Part 1910 would apply to the storage and handling of flammable or explosive materials, but the possibility that radioactive materials could be involved in a fire or explosion would have to be reflected in a fuel cycle licensee's emergency plan and operator training procedures.

Risks may also be posed by the proximity of toxic chemicals or inert gases to essential areas of a fuel cycle facility. Accidental release of such chemicals could render the control room, the emergency operations center, or other essential areas uninhabitable. NRC Regulatory Guide 1.78 discusses the precautions that would be appropriate for protecting a reactor control room from hazardous chemical fumes. Similar considerations shoud be applied to fuel cycle licensees.

D. Chemical Risks Posed by Nonradioactive Materials.

Chemical risks at fuel cycle facilities that do not involve radioactive materials either directly or indirectly are strictly considered to be subject to EPA or OSHA regulations, not NRC regulations. These hazards are not the subject of this BTP. The Memorandum of Understanding with OSHA indicates that, in the future, NRC inspectors will make more of an effort than previously to assess licensee compliance with OSHA regulations and to inform OSHA of possible incidences of noncompliance.

III. Position

To help ensure that chemical hazards do not endanger the safety of workers or members of the general public, the following steps should be taken by fuel cycle facility licensees:

A. Licensees should identify all chemical risks of the types discussed in Sections II. B and C above, which are posed by materials in their facilities or in the vicinity of their facilities. Licensees should determine the quantities of all the chemicals identified.

For purposes of making a complete identification, hazardous chemicals should be considered to be any included in the following sources:

29 CFR 1910.101–.120 for flammable and explosive materials,
29 CFR 1910.1000–.1500 for occupational toxins,
40 CFR Parts 116–117 for substances hazardous if accidentally released into the environment,
40 CFR Parts 702–799 for toxic substances subject to the 1982 Toxic Substances Control Act,
40 CFR 261.31–.33 for hazardous wastes, and Material Safety Data Sheets.

B. Licensees should determine that proper facilities, equipment, and procedures are employed for the safe storage and handling of all hazardous chemicals in their possession. All operators should be trained in procedures for the safe handling and disposal of hazardous chemicals in the licensee's possession.

C. Licensees should determine that proper procedures are in place and proper facilities and equipment are available for measuring the extent of, mitigating the consequences of, and otherwise dealing with any potential accidental release of hazardous chemicals. These procedures, facilities, and equipment should be described in the licensee's emergency plan. Procedures should be in place for notifying the EPA and any responsible state or local agencies of such a release. All operators should be trained in procedures for responding to an emergency involving hazardous chemicals. Licensees should determine that proper procedures are in place and that proper facilities and equipment are available for dealing with a release of radioactive material caused by fire, explosion, or other accident with nonradioactive materials. These procedures, facilities, and equipment should be described in the licensee's emergency plan. Accidents involving hazardous nonradioactive materials located or transported nearby but not on the fuel cycle site should also be considered, even if such materials are not in the possession of the licensee. The proximity of major depots of hazardous chemicals should be considered in evaluating the possible impact on hazardous chemicals on the safe operation of the fuel cycle facility.

The management controls, conditions required for operation, and fire protection measures discussed in other BTPs may be used to help accomplish these chemical safety goals.

Branch Technical Position on Fire Protection for Fuel Cycle Facilities

I. Introduction

Any application for a license to possess and use licensed materials in a fuel cycle facility must provide information showing that the applicant's proposed equipment, facilities, and procedures are adequate to protect health and minimize danger to life or property. In the area of fire protection, the staff has in the past generally accepted compliance with local building codes and proof of insurance as sufficient fire protection information for approval of license applications. In addition, ad hoc measures have been taken in response to the staff's inspection findings relating to specific facilities.

Following the January 4, 1986, accident at the Sequoyah Fuels Corporation uranium hexafluoride conversion facility, however, the NRC undertook a major review of the operational safety of fuel cycle facilities. Both the recommendations of the Materials Safety Regulation Review Study Group and the independent staff action to assess operational safety at each of 12 major fuel cycle facilities licensed by the NRC led the staff to the finding that fire protection is one of the most important safety concerns.

This finding, coupled with the experience of the applicants and the staff in their respective roles of operation and of regulation of fuel cycle facilities, permits the formulation of this Branch Technical Position (BTP), which should provide guidance to the applicants on meeting the approval requirements of NRC regulations insofar as fire protection is concerned.

The objective of this BTP is to provide guidelines for a fire protection program at each fuel cycle facility that would be acceptable to the staff as having the necessary elements to ensure protection of health and to minimize danger to life and property. These guidelines should not be considered all-inclusive, and nothing should preclude a licensee from adopting a program that is prudent and employs the latest techniques of fire protection that meet or exceed the guidance in this BTP.

II. Discussion

A. Fire Protection Concept

Accidental fires and consequent explosions, apart from being threats to health, life, and property by themselves, are potential causes of unplanned radioactive releases at a fuel cycle facility. The concept of fire protection presented by this BTP consists of implementing measures to achieve a balance among the following desired results:

- Prevention of fires;
- Detection of fires; and
- Containment and suppression of fires.

A discussion of these three levels of fire protection follows:

1. Fire prevention: Fire prevention measures at a fuel cycle facility should start with the design of the buildings, structures, systems, components, and processes involved in the storage, handling, and processing of the radioactive materials and chemicals used in the processes. The processes should be designed and physically laid out so as to minimize the possibility of overheating, over-pressurization, and leakage; and the confluence of combustibles and ignition sources except by design. Even with the most well-designed facility, prevention of fires depends to a great extent on following good housekeeping practices and operating personnel scrupulously following safety instructions.

2. Fire detection: The best fire prevention measures may occasionally fail, in which case an effective fire detection system should detect the occurrence of fire and activate alarm systems so that personnel evacuation and fire containment and suppression measures may start promptly. The type and location of the detectors depends on the type of hazard.

3. Containment and suppression of fire: Containment of fire in its area of origin and prevention of its spread to new areas and new combustibles is the first step to be taken upon detection of a fire. This is achieved by activating systems such as barriers, ventilation dampers, exhaust fans, and drainage pumps to prevent migration of gases, hot combustion products, and flammable liquids to new areas. Fire suppression activity should start at the same time as barrier systems are activated. The media employed in the suppression and the means of their delivery to the fire source and to heated areas and substances depends on the plant area and the processes and equipment protected. The concerns for nuclear criticality safety, chemical safety, and the danger to personnel from non-life supporting extinguishing media such as carbon dioxide, should all be taken into account in planning a fire suppression system.

B. Building Construction

Buildings, structures, components, and processes in a fuel cycle facility should be designed to protect the health of plant personnel and the public and minimize the danger to life and property during normal operation, as well as during abnormal situations such as fires and explosions. The following discussion lists desirable features in the design and construction of a facility. It is recognized, however, that a number of fuel cycle facilities already exist and are in operation, and these facilities may not have all of the desirable design and construction features.

1. The buildings should be designed and constructed using components of noncombustible and heat and fire resistant materials, as far as practicable. Assuming failure of a fixed fire suppression system, the structural barriers (including walls, roofs, floors, doors, and penetrations) surrounding a plant area of high hazard of fire should be constructed so as to confine the effluents of fire for a sufficient duration for fire suppression measures to be applied. Such structural barriers should also possess adequate fire ratings so as not to propagate fire to adjoining areas. ASTM Standard E–119, "Fire Test of Building Construction and Materials," which defines fire ratings, ASTM Standard E–84, "Surface Burning Characteristics of Building Materials," and local and national building codes may be consulted.

2. Suspended ceilings and their supports, insulation for pipes and ducts, and sound-attenuating materials should be non-combustible and should not hinder effective functioning of the fire suppression system. Concealed spaces should be devoid of combustibles, as far as practicable.

3. Electrical wiring and their supporting components such as conduits and cable trays, servicing essential components, including fire protection systems, should be protected against fire. Non-fire propagating insulated electrical cables should be used in areas of high fire hazard, as far as practicable.

4. Provision should be made for protection of the plant from lightning damage.

5. Exits from the various plant areas should be strategically located so as to facilitate orderly evacuation of personnel, with minimum exposure to fire products and radioactive releases.

6. The plant areas should be designed so that fire fighting personnel along with their equipment may access them with minimum hindrance.

C. Ventilation System

The ventilation system should be designed to isolate affected areas during fire accidents and to provide channels for exhausting fire products, through filters if necessary, to outside the plant. NFPA Standard 90–A, "Air Conditioning and Ventilation Systems," may be consulted on ventilation design for fire protection.

Where a ventilation system is required to prevent the release of radioactive material to the atmosphere, all materials of construction and all filters for the system should be fire resistant. High efficiency HEPA filters should conform with Underwriters' Laboratories Standard UL–586, also designated ANSI B 132.1.

If a heat removal system such as a water spray system is required for the final filter plenum, it should operate automatically (with manual override) upon abnormal rise of the effluent temperature. The water distribution system for the water spray system should be in addition to and separate from the fire water distribution system. Provision should be made for periodic operational performance checks of such systems.

D. Fire Detection and Alarm Systems

1. Provision should be made for fire detection and alarm systems consisting of fire and smoke detectors, signalling devices, and audible and visible indicators of fire at various appropriate locations in the plant, as well as at a central constantly attended monitoring station. Such monitoring stations should constantly have available information on the status and functioning of the fire detection and alarm systems and of the installed fire suppression systems, including a zone indication of the origin of an alarm. Provision should be made for the periodic testing of these systems. Fire detection systems should comply with the requirements of Class A systems as defined in NFPA 72D, "Standard for the Installation, Maintenance, and Use of Proprietary Protective Signalling Systems," and NFPA 72E, "Automatic Fire Detectors."

2. Manual fire alarm actuators should be installed throughout the plant at locations which are readily accessible, including exit passageways.

3. Actuation of any fire suppression system, such as flow through a sprinkler, should initiate visual and audible alarms.

E. Fire Suppression Systems

Manually actuated or automatic fire suppression systems should be installed in all plant areas having significant fire hazard. The selection of a specific type of system should take into account the severity of the hazard, type of activity performed in the area, nuclear criticality concerns, consequences of fire (e.g., risk of radioactive release), and consequences of spurious actuation of the suppression system. Provisions should be made for the periodic testing of the systems. The following subsections provide general guidance on the selection of a system:

1. Automatic water sprinkler coverage should be provided in areas of significant fire hazard, except where nuclear criticality or other hazards specifically obviate their use. NFPA 13, Installation of Sprinkler Systems, provides guidance for selection and design of sprinkler systems.

2. Plant areas having significant fire hazard and not protected by automatic water sprinkler systems should be protected by other systems employing fire suppression agents such as inert gases, carbon dioxide, halogenated hydrocarbon gases, and high-expansion foam. Guidance on carbon dioxide and halon systems are provided in NFPA 12 and 12A, respectively. Guidance on the selection and design of foam systems are provided in NFPA 11 and 11A.

3. Selection of all gaseous suppression systems should take into account protection of personnel, possible pressurization of the enclosure protected, and possible adverse reaction with pyrophoric materials.

F. Manual Fire Fighting Equipment

1. Portable fire extinguishers, suitable in capacity and in the type of suppression agent used, should be available throughout the plant where specific types of fire hazards exist. The

number of such extinguishers and their location should be guided by the severity of the hazard, the occupancy of the plant area, and ready access in an emergency. Guidance on the selection and use of portable fire extinguishers is provided in NFPA 10.

2. Standpipe and hose systems should be provided for the protection of all process and non-process areas. The hose outlet locations should be readily accessible. Guidance on standpipe and hose systems is provided in NFPA 14.

G. Fire Protection Water System

1. Adequate supply of water for the installed fire protection systems should be assured. Additional supply of fire fighting water that may be needed by an outside fire department should be planned for in consultation with them. Compatible connections should be provided for outside fire department use. The fire water distribution system should be designed and constructed for high reliability. NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, should be used for guidance.

2. A collection system should be provided for the drainage of water used in fire suppression and fire fighting. Nuclear criticality concerns, sampling, confinement, and retrievability of the drainage should be taken into account in the design and construction of the system.

H. Emergency Lighting and Communications

1. To facilitate evacuation and fire fighting in the event of a power failure, provision should be made for emergency lighting powered by an alternate source.

2. An emergency communication system, including portable transceivers, should be provided.

I. Training

In order to extract maximum benefit from a well/designed fire protection system, the personnel monitoring and operating the system should be trained. The training for non-fire fighting personnel usually takes the form of drills to ensure orderly evacuation, use of hand-held fire extinguishers and fire alarm devices, and the importance of good housekeeping. Facility employees assigned fire fighting duties, such as members of an organized fire brigade, should receive appropriate training. NFPA 1001, Fire Fighter Professional Qualifications, may be consulted for guidance as to the elements of the training. Local fire department personnel who may be summoned to fight fires in the facility should be provided orientation training on the facility and its processes. Whenever practicable, facility fire fighting personnel also should receive training with the local fire department in fire fighting methods.

J. Fire Emergency Plans

Fire emergency plans should be drawn up in consultation with the local fire departments, taking into account those departments' existing equipment, distances from the plant, and their training in fighting fires involving radioactive materials and chemicals in the facility.

III. Position

A. Fire Protection Program

Licensees should establish and maintain a fire protection program for the facility. The overall management of the program should be under the direction of a senior level individual, who has been given the authority and staff assistance to implement measures relating to fire protection throughout the facility. The program should include provisions for audits of the effectiveness of the program.

B. Fire Protection Equipment

The selection, installation, and use of the fire protection equipment and systems should be appropriate for the plant area protected and should conform with or exceed the requirements of NFPA and other national codes and standards cited above (see B. Discussion) and also those cited in the references. The equipment should be maintained and tested periodically, as appropriate, to ensure reliability of operation in an emergency.

C. Fire Hazard Analysis

For both existing and new facilities, licensees should perform a fire hazard analysis for each plant area and for the facility as a whole. This analysis should account for the combustible and the radioactive materials in the area, their heat content, the processes performed in the areas that have potential for fire or explosion, and the potential sources of ignition. It should consider credible scenarios by which a fire can occur and the capabilities of installed fire suppression systems, portable extinguishers, and other fire fighting measures that the management may summon (e.g., outside fire departments). The objective of a fire hazard analysis would be to detect deficiencies in the fire protection program or otherwise to demonstrate that the facility has in operation fire protection systems, that can handle all credible fire scenarios. The fire hazard analysis should be periodically reviewed and updated as necessary. Any deficiencies identified as a result of an analysis should be corrected by a judicious balance of facility modification and enhanced fire protection measures.

D. Fire Emergency Plans

Licensees should establish fire emergency plans for each area of the facility. Such plans assign responsibilities to individuals and include measures to ensure orderly evacuation of personnel, shutting down operations, activating barrier systems, summoning fire fighters, controlling small fires, and controlling release of radioactive material.

E. Training

Licensees should have a training program for an adequate number of personnel to perform assigned duties during a fire emergency. This program also should provide for periodic retraining and drills. Evacuation drills should be conducted for all facility personnel.

F. Administrative Controls

Licensees should establish fire safety procedures aimed at minimizing fire hazards such as for transit and storage of combustibles in the plant, general housekeeping, and maintenance work such as welding and torch cutting.

IV. References

A. National Fire Protection Association Codes and Standards

NFPA 4, "Organization of Fire Services."
NFPA 4A, "Fire Department Organization."
NFPA 6, "Industrial Fire Loss Prevention."
NFPA 7, "Fire Emergencies Management."
NFPA 8, "Effects of Fire on Operations, Management Responsibility."
NFPA 10, "Portable Fire Extinguishers, Installation, Maintenance, and Use."
NFPA 11, "Foam Extinguishing Systems."
NFPA 11A, "High Expansion Foam System."
NFPA 11B, "Synthetic Foam and Combined Agent Systems."
NFPA 12, "Carbon Dioxide Systems."
NFPA 12A, "Halon 1301 Systems."
NFPA 12B, "Halon 1211 Systems."
NFPA 13, "Sprinkler Systems."
NFPA 14, "Standpipe and Hose Systems."
NFPA 15, "Water Spray Fixed Systems."
NFPA 16, "Foam-Water Sprinkler and Spray Systems."
NFPA 20, "Centrifugal Fire Pumps."
NFPA 24, "Outside Protection."

NFPA 26, "Supervision of Valves."
NFPA 27, "Private Fire Brigade."
NFPA 30, "Flammable Combustible Liquids Code."
NFPA 51B, "Cutting and Welding Processes."
NFPA 68, "Explosion Venting."
NFPA 69, "Explosion Prevention Systems."
NFPA 70, "National Electrical Code."
NFPA 72D, "Proprietary Protective Signaling Systems."
NFPA 72E, "Automatic Fire Detectors."
NFPA 80, "Fire Doors and Windows."
NFPA 92M, "Waterproofing and Draining of Floors."
NFPA 197, "Initial Fire Attack Training."
NFPA 204, "Smoke and Heat Venting Guide."
NFPA 220, "Types of Building Construction."
NFPA 251, "Fire Tests, Building Construction and Materials."
NFPA 259, "Test Method for Potential Heat of Building Materials."
NFPA 802, "Recommended Fire Protection Practice for Nuclear Reactors."

B. U.S. Nuclear Regulatory Commission Documents

NUREG–0800, Standard Review Plan 9.5.1 "Guidelines for Fire Protection for Nuclear Power Plants," Revision 2, July 1981.

C. Other Documents

ANSI Standard B31.1–1973, "Power Piping."
ASTM D–3286, "Test for Gross Calorific Value of Solid Fuel by the Isothermal-Jacket Bomb Calorimeter (1973)."
ASTM E–84, "Surface Burning Characteristics of Building Materials (1976)."
ASTM E–119, "Fire Test of building Construction and Materials (1976)."
Factory Mutual System Approval Guide—Equipment, Materials, Services for Conservation of Property.
NFPA Fire Protection Handbook.
Underwriters Laboratories Rating List.
Underwriters Laboratories, "Building Materials Directory."
"International Guidelines for Fire Protection at Nuclear Installations including Nuclear Fuel Plants, Nuclear Fuel Stores, Teaching Reactors and Research Establishments," 1987 Edition.
American National Standard Institute (ANSI) N655–1985, "Fire Protection for LWR Fuel Fabrication Facilities," dated April 2, 1985.

Dated at Rockville, Maryland, this 14th day of March, 1989.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 89–6584 Filed 3–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 55–08347; ASLBP No. 88–577–02–EA]

Reconstitution of Board for Maurice P. Acosta, Jr.

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Maurice P. Acosta, Jr.* (Operator License No. 6010–2, EA 88–164), Docket No. 55–08347, is hereby reconstituted by appointing Administrative Judge Jerry R. Kline in place of Administrative Judge Kenneth A. McCollom, who is unable to serve because of a schedule conflict.

As reconstituted, the Board is comprised of the following Administrative Judges:

B. Paul Cotter, Jr, Chairman
Dr. Harry Foreman
Dr. Jerry R. Kline

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is:

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 15th day of March 1989.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 89–6582 Filed 3–20–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–440]

The Cleveland Electric Illuminating Co., et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–48, issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1 located in Lake County, Ohio.

The amendment would add an additional reference to Attachment 1 of the Operating License to implement, prior to startup from the first refueling outage, corrections to human engineering discrepancies as additionally committed to in the "Detailed Control Room Design Review— First Refuel HED Revisions Report," which is Enclosure 1 to the licensees' February 10, 1989 letter (PV–CEI/NRR–0946L).

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the

first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John N. Hannon: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 14th day of March, 1989.

For The Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-6586 Filed 3-20-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 AND 50-278

Philadelphia Electric Co.; et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendments would revise the calibration frequencies for the Source Range Monitor (SRM) and Intermediate Range Monitor (IRM) Detectors Not in Startup Position for control rod block actuation in accordance with the licensee's application for amendment dated March 10, 1989.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The current Technical Specifications for Peach Bottom contain the requirement that the SRM and IRM-Detector Not in Startup Position channels be functionally tested before each startup and that they be calibrated within 24 hours before each startup or controlled shutdown. The licensee states that the current calibration specification requires that personnel enter the containment drywell at a time that it is undesirable or impractical to do so due to the environmental conditions of temperature, inerted atmosphere and radiation in the drywell. This instrumentation is calibrated by the licensee as part of its preventive maintenance program during each refueling outage. The licensee's position is that the existing functional testing requirement and the preventive maintenance calibration are adequate for this instrumentation and that, accordingly, the additionally required calibration within 24 hours of startup or shutdown may be deleted from the Peach Bottom Technical Specifications.

The licensee has provided the following analysis to support a no significant hazards consideration determination for this change:

(i) *The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.*

The SRM and IRM-Detector Not in Startup Position instrument channels function to initiate a control rod block to assure that no control rod is withdrawn unless the appropriate detectors are properly inserted when they must be relied upon to provide the operator with neutron flux information. The proposed changes to delete the requirement to calibrate these instrument channels will not affect their ability to perform this function. The performance of functional tests on the instrument channels at the existing Technical Specification frequency adequately assures the operability of the channels. The preventive maintenance re-alignment (calibration) performed each refueling outage in accordance with vendor recommendations provides adequate assurance of correct instrument calibration. Past surveillance data indicates that the instrumentation is highly reliable. The proposed changes do not affect the analyses of the abnormal operational

transients and the design basis accidents as presented in Section 14 of the PBAPS Updated Final Safety Analysis Report. The proposed changes do not change the design or operation of the detector systems; therefore, they do not increase the probability or consequences of any accident previously evaluated.

(ii) *The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.*

The proposed changes to delete the calibration requirement for the SRM and IRM-Detector Not in Startup Position instrument channel do not change the design or operation of the detector systems, and, therefore, do not create the possibility of a new or different kind of accident from any previously evaluated.

(iii) *The proposed revisions do not involve a significant reduction in a margin of safety.*

The instrument calibration frequency required by the existing Technical Specification is not necessary as discussed in the Safety Discussion section of this application. Performance of the calibration is also prohibited during power operation due to conditions inside containment. Preventive maintenance realignments (calibrations) which are performed each refueling outage in accordance with vendor recommendations, adequately ensure proper calibration of the instrument channels; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above reasoning, the licensee has determined that the proposed changes involve no significant hazards consideration. The NRC staff has reviewed the licensee's no signficant hazards consideration determination and agrees with the licensee's analyses. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 20, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L. Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in

Missouri (800) 342–6700), the Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 15th day of March 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–6587 Filed 3–20–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee, Review and Solicitation of Public Comment on Proposed Modification of List of Articles Eligible for Duty-Free Treatment Under U.S. Generalized System of Preferences (GSP) and Notice of Withdrawal of Petition Under 1988 Annual Review

I. Initiation of Expedited Review

The principal purpose of this notice is to announce that the TPSC has granted a request from The Cigar Association of America to conduct the review of the possible removal of cigarette filler tobacco (HTS item 2401.20.40) on an expedited basis.

II. Public Hearing and Comment Period

The GSP Subcommittee of the Trade Policy Staff Committee invites submissions in support of or in opposition to the case that is the subject of this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

A hearing will be held on Wednesday, May 3 beginning at 10:00 a.m. in room 403, 600 17th Street, NW., Washington, DC provided that requests to testify are received as specified below. The hearing will be open to the public and the transcript will be made available for public inspection or purchase from the reporting company.

Requests to present oral testimony in connection with public hearings should be accompanied by twenty copies, in English, of all written briefs or statements and should be received by the Chairman of the GSP Subcommittee no later than the close of business Friday, April 28. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record.

Parties not wishing to appear may submit written briefs or statements in twenty copies, in English, in connection with articles or countries under consideration in the public hearings, provided that such submissions are filed by the date listed above, April 28. This will be the only opportunity to submit written comments for those who do not wish to appear at the hearing; there will be no post-hearing briefs.

Rebuttal briefs should be submitted in twenty copies, in English, by close of business Thursday, May 11.

All submissions should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., Room 517, Washington, DC 20506.

Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Briefs or statements must be submitted in twenty copies in English. If the document contains business confidential information, twenty copies of a non-confidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

All communications with regard to this review should be addressed to the GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 517, Washington, DC 20506. Questions may be directed to the GSP Information Center at (202) 395–6971.

Withdrawal of Petition

This publication also serves notice that the Government of the Philippines has withdrawn its petition (case numbers 88–HS–1 and 88–HS–2) concerning Harmonized System subheadings 1519.30.40.00 and 2905.17.00 from consideration. These cases were being considered during the 1988 Annual Review. The Trade Policy Staff Committee (TPSC) had formally initiated the review of these cases in a notice of July 20, 1988 (53 FR 16303). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89–6553 Filed 3–20–89; 8:45 pm]

BILLING CODE 3190–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Power Plan Amendments; Columbia River Basin Fish and Wildlife Program

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan (Yakima phase 2 passage).

SUMMARY: On December 15, 1988, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839b(d)(1)) the Pacific Northwest Electric Power and Conservation Planning Council (Council) voted to initiate rulemaking to amend sections 803(b) and 1403(4.5) of the Columbia River Basin Fish and Wildlife Program (program), to allow advance design work on additional salmon and

steelhead passage projects in the Yakima River Basin. Public hearings were held in Idaho, Montana, Oregon, and Washington, and written comments were accepted through February 10, 1989. The Council adopted the amendments on March 9, 1989.

SUPPLEMENTARY INFORMATION: The amendments call for advance planning and design of 53 passage projects, whose combined costs are estimated at $600,000 ($100,000–$200,000 in the Fiscal Year 1989 and $400,000 in Fiscal Year 1990). Final approval and construction are contingent on the completion of subbasin and system plans.

For a full Copy of Final Amendments, Including the Council's Response to Comments, or for Further Information: Contact Judi Hertz at 851 SW. 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. 89–6530 Filed 3–20–89; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–8350]

Issuer Delisting; Notice of Application of Delmed, Inc. To Withdraw From Listing and Registration

March 15, 1989.

Delmed, Inc. ("Company"), (10½% Convertible Senior Subordinated Debentures, due November 15, 1997; 10½% Convertible Subordinated Debentures, due November 15, 2002) has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

As of January 13, 1989, there were fewer than 20 registered holders of the Convertible Senior Subordinated Debentures and fewer than 35 registered holders of the Convertible Subordinated Debentures. A review of the AMEX records indicates that since 1986, the trading volume of the debentures has been relatively low.

The Company states that the liquidity of the debentures should not be affected by delisting from the AMEX because the Company has entered into an agreement with the brokerage firm of A.G. Edwards & Sons, Inc. under which that firm has agreed to maintain a market for the debentures.

Any interested person may, on or before April 5, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC, 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the applicaiton after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–6626 Filed 3–20–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2343]

Declaration of Disaster Loan Area; Kentucky (and Contiguous Counties in the States of Indiana and Ohio)

The above-numbered Declaration (54 FR 9584) is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated March 3 and March 6, 1989, to include the following counties in the Commonwealth of Kentucky as a result of damages from severe storms and flooding between February 13 and March 8, 1989: Bath, Carroll, Carter, Clark, Edmonson, Elliott, Fayette, Fleming, Greenup, Hart, Jackson, Jefferson, Knox, Madison, McLean, Montgomery, Morgan, Nicholas, Ohio, and Powell.

In addition, applications for economic injury from small businesses located in the contiguous counties of Barren, Bell, Boyd, Clay, Daviess, Estill, Hancock, Henderson, Hopkins, Johnson, Laurel, Lawrence, Lee, Lewis, Magoffin, Mason, Menifee, Metcalf, Owsley, Rowan, Webster, Whitley, and Wolfe, in the Commonwealth of Kentucky; Floyd and Switzerland Counties in the State of Indiana; and Lawrence and Scioto Counties in the State of Ohio, may be filed until the specified date at the previously designated location.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 27, 1989, and for economic injury until the close of business on November 24, 1989.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 8, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89–6556 Filed 3–20–89; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Areas Nos. 2344 and 2345]

Declaration of Disaster Loan Area; Massachusetts (and Contiguous Counties in the State of New Hampshire)

The City of Haverhill, Essex County, and the contiguous counties of Middlesex and Suffolk, in the Commonwealth of Massachusetts, and Rockingham County, in the State of New Hampshire, constitute a disaster area as a result of damages from a severe fire which occurred in downtown Haverhill on February 11, 1989. Applications for loans for physical damage as a direct result of this fire may be filed until the close of business on May 8, 1989 and for economic injury as a direct result of this fire until the close of business on December 8, 1989 at the address listed below: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, NJ 07410, or other locally announced locations.

The interest rates are:

Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000%
Businesses with Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Businesses and Non-Profit Organizations (EIDL) Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125%

The numbers assigned to this disaster for physical damage are 234405 for the Commonwealth of Massachusetts, and 234505 for the State of New Hampshire. For economic injury the numbers are 673600 for the Commonwealth of Massachusetts and 673700 for the State of New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: March 8, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-6557 Filed 3-20-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas Nos. 2334, 2335 and 2339; Amdt. 1]

New York (and Contiguous Counties in the States of Connecticut and New Jersey); Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 8864) is hereby amended to include Bergen Country in the State of New Jersey, as a contiguous county due to severe fires in the City of Yonkers, Westchester County, New York, which occurred on January 11, 1989. The number assigned to the State of New Jersey for physical damage is 233905 and for economic injury the number is 672700. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on April 24, 1989 and for economic injury until the close of business on November 22, 1989.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Date: February 28, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-6558 Filed 3-20-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5228]

Horn & Hardart Capital Corp; Surrender of License

Notice is hereby given that Horn & Hardart Capital Corporation, 730 Fifth Avenue, New York, NY 10019 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Horn & Hardart Capital Corporation was licensed by the Small Business Administration on September 11, 1985

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on March 6, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 10, 1989

[FR Doc. 89-6559 Filed 3-20-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0368]

Peerless Capital Co., Inc.; License Surrender

Notice is hereby given that Peerless Capital Co., Inc., 675 South Arroyo Parkway, Pasadena, California 91105, has surrendered its License to operate as a small business investment company under Section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Peerless Capital Co., Inc. was licensed by the Small Business Administration on July 11, 1986.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on March 3, 1989, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 10, 1989

[FR Doc. 89-6560 Filed 3-20-89; 8:45 am]

BILLING CODE 8025-01-M

Small Business Administration

[License No. 05/05-0171]

Circle Ventures, Inc; Filing of an Application for Approval of A Conflict of Interest Transaction

Notice is hereby given that Circle Ventures, Inc. (Circle), 20 North Meridian Street, Indianapolis, Indiana 46204, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1988)) for an exemption from the provisions of the conflict of interest regulation.

This exemption, if granted, will permit Circle to provide financing in the amount of § 125,000 to Wexford Industries Corporation (Wexford) 7036 Brookville Road, Indianapolis, Indiana 46239.

Circle's former Vice President Ms. Murry M. Welch, who resigned her position effective December 31, 1988, is now President and sole shareholder of Wexford.

Pursuant to § 107.3 "Associate of a Licensee" and § 107.903(c) "Conflicts of Interest" of the SBA Regulations, Circle's former Vice President is considered to be an associate of Circle. As such, the transaction will require an exemption from § 107.903(b)(1) of the Regulations.

Notice is hereby given that any person may, on or before April 5, 1989, submit to the Small Business Administration, in writing, relevant comments on the proposed transaction. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Indianapolis, Indiana.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: March 10, 1989.

[FR Doc. 89-6561 Filed 3-20-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Date: March 15, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Department Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: New
Form Number: FMS 5510
Type of Review: New Collection
Title: Authorization Agreement for Preauthorized Payment

Description: The Authorization Agreement for Preauthorized Payments is used by remitters (individuals and corporations) to authorize electronic fund transfers from the bank accounts maintained at financial institutions for government agencies to collect monies.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees
Estimated Number of Respondents: 100,000
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 25,000 hours
Clearance Officer: Rita Franklin, (301) 436–5300, Financial Management Service, Room 100, 3700 East-West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–6537 Filed 3–20–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 15, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0019
Form Number: ATF Form 6A (5330.3c)
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War.
Description: This information collection is needed to verify importation of firearms, ammunition and implements of war. ATF Form 6A is completed by Federal firearms licensees, active duty military members, nonresident U.S. citizens returning to the U.S., and aliens immigrating to the U.S.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 20,000
Estimated Burden Hours Per Response: 24 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 8,000 hours.
OMB Number: 1512–0200
Form Number: ATF F 5110.31
Type of Review: Extension. The Office of Management and Budget has set a common review period for all known Federal agency information collections used to obtain information necessary for the importation of merchandise into the United States. The purpose of the review is to plan for the elimination of the collection of duplicate information elements required from the importing public.
Title: Application and Permit to Ship Puerto Rican Spirits to the U.S. Without Payment of Tax.
Description: ATF F 5110.31 is used to allow a person to ship spirits in bulk into the U.S. The form identifies the person in Puerto Rico from where shipments are to be made, the person in the U.S. receiving the spirits, amount of spirits to be shipped and the bond of the U.S. person to cover taxes on such spirits.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 20
Estimated Burden Hours Per Response: 27 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 450 hours.
Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 89–6538 Filed 3–20–89; 8:45 am]

BILLING CODE 4810–25–M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 1988

AGENCY: Internal Revenue Service, Treasury.

ACTION: Publication of inflation adjustment factor and reference price for calendar year 1988 as required by section 29(d)(2)(A) of the Internal Revenue Code (26 U.S.C. 29(d)(2)(A)) (formerly section 44D, renumbered by the Deficit Reduction Act of 1984).

SUMMARY: The inflation adjustment factor and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATE: The 1988 inflation adjustment factor and reference price apply to qualified fuels sold during calendar year 1988.

Inflation factor: The inflation adjustment factor for calendar year 1988 is 1.5483.

Price: The reference price for all qualified fuels is $12.57 per equivalent barrel for the 1988 calendar year.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT:
For the inflation factor—Thomas Thompson, PFR:R, Internal Revenue Service, 1201 E Street, NW., Room 1109, Washington, DC 20224, Telephone Number (202) 376–0720 (not a toll-free number).
For the reference price—Michael Hahn, CC:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Room 5118, Washington, DC 20224, Telephone Number (202) 566–3473 (not a toll-free number).

Kenneth Klein,

Acting Associate Chief Counsel (Technical).

[FR Doc. 89–6606 Filed 3–20–89; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 53
Tuesday, March 21, 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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

March 15, 1989.

TIME AND DATE: 10:00 a.m., Thursday, March 23, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 1810, District 6, UMWA v. Ohio Valley Coal Co., as successor to NACCO Mining Co.*, Docket No. LAKE 87-19-C. (Issues include whether miners are entitled to compensation under Section 111 of the Mine Act.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 653-5629/(202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-6667 Filed 3-17-89; 11:35 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 9:30 a.m., Friday, March 24, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-6636 Filed 3-17-89; 9:55 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, March 27, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 17, 1989.

Jennifer J. Johnson

Associate Secretary of the Board.

[FR Doc. 89-6337 Filed 3-17-89; 9:55 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Tuesday, March 21, 1989 at 3:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No 731-TA-411 (F) (Calcined Proppants from Australia)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Kenneth R. Mason,

Secretary.

March 8, 1989.

[FR Doc. 89-6767 Filed 3-17-89; 3:38 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 20, 27, April 3, and 10, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 20

Wednesday, March 22

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of March 27—Tentative

Tuesday, March 28

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for South Texas, Unit 2 (Public Meeting).

Wednesday March 29

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1).
2:00 p.m.
Briefing on Status of West Valley Project (Public Meeting).

Thursday, March 30

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Vogtle, Unit 2 (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting).

Week of April 3—Tentative

Wednesday, April 5

2:00 p.m.
Briefing on Certification of Radiographers (Public Meeting).

Thursday, April 6

10:00 a.m.
Breifing on Status of Activities with the Center for Nuclear Waste Regulatory analysis (Public Meeting).
1130 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed).

Week of April 10—Tentative

Thursday, April 13

9:30 a.m.
Briefing on Status of Implementation of Severe Accident Master Integration Plan (Public Meeting).
2:00 p.m.
Breifing on Implementation of Safety Goal Policy Statement (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

March 16, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89–6718 Filed 3–17–89; 3:35 p.m.]

BILLING CODE 7590–01–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 March 20, 1989.

A closed meeting will be held on Tuesday, March 21, 1989, at 2:30 p.m. An open meeting will be held on Thursday, March 23, 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, March 21, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Formal order of investigation.
Institution of injunctive actions.
Subpoena enforcement action.
Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Thursday, March 23, 1989, at 10:00 a.m., will be:

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.

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: Alden Adkins at (202) 272–2000.

Jonathan G. Katz,

Secretary.

March 16, 1989.

[FR Doc. 89–6766 Filed 3–17–89; 3:36 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 54, No. 54
Tuesday, March 21, 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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 87-092]

Sharwil Avocados From Hawaii

Correction

In proposed rule document 89-5192 beginning on page 9453 in the issue of Tuesday, March 7, 1989, make the following corrections:

On page 9455, in the first column, in amendatory instruction 9c, the first line should read: "c. Paragraph (e) would be amended by".

On the same page, in the same column, in amendatory instruction 9e, the first line should read: "e. Paragraph (g) would be amended by".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0447]

CIBA Vision Corp.; Premarket Approval of CIBA Vision Sterile Saline Solution and CIBA Vision Sterile Buffered Saline Solution

Correction

In notice document 89-4957 beginning on page 9086 in the issue of Friday, March 3, 1989, make the following correction:

On page 9086, in the third column, under **SUMMARY**, in the sixth line, after "Vision" insert "Sterile".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 2, 5, 7, 10, 12, 13, 14, 16, 20, 21, 25, 50, 56, and 58

[Docket No. 88N-0002]

Certain Regulations; Editorial Amendments

Correction

In rule document 89-4959 beginning on page 9033 in the issue of Friday, March 3, 1989, make the following corrections:

1. On page 9033, in the second column, in the first complete paragraph, in the second line, after "nonsubstantive" insert a comma; and in the third line, "pocedures" should read "procedure".

§ 10.1 [Corrected]

2. On page 9034, in the second column, in amendatory instruction 16, in the second line, "(ar" should read "(a)".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26619; File Nos. SR-NYSE-88-39 Amendments Nos. 1 and 2 and SR NYSE-88-40 Amendment No. 1]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Listing Standards for Constituent Securities of Common Stock and Meaning, Administration or Enforcement of Rule 19c-4 with Respect to Constituent Securities of Common Stock such as Unbundled Stock Units

Correction

In notice document 89-5890 beginning on page 10602 in the issue of Tuesday, March 14, 1989, make the following correction:

On page 10605, in the 1st column, in the 14th line, the comment date that reads "April 14, 1989" should read "April 4, 1989".

BILLING CODE 1505-01-D

federal register

Tuesday
March 21, 1989

Part II

Federal Emergency Management Agency

44 CFR Parts 206 and 207
Disaster Assistance; Interim Rule With Request for Comments

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 206 and 207

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule with request for comments.

SUMMARY: FEMA is publishing this rule for two reasons: To implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, or the Act), and to implement the Office of Management and Budget's (OMB) "common rule," Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (effective on October 1, 1988). The "common rule" was recently adopted by FEMA at 44 CFR Part 13. The President signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707) on November 23, 1988. This law amends the Disaster Relief Act of 1974, Pub. L. 93–288, and retitles it the Stafford Act. As a result, FEMA is adding new Parts 206 and 207 to 44 CFR. The interim regulations which are being published at this time will govern disasters or emergencies declared by the President on or after November 23, 1988. Existing regulations at 44 CFR Part 205 will remain in effect to govern those major disasters and emergencies declared prior to enactment of the amendments.

DATES: These interim rules will be effective on March 21, 1989, except paragraph (b)(2) of § 206.253 which is effective May 22, 1989. Comments from the public are encouraged; they will be accepted until May 22, 1989.

ADDRESS: Send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street SW., Washington, DC 20472, (202) 646–3615, or contact the program officer for the particular section in question.

SUPPLEMENTARY INFORMATION:

General Information

FEMA is publishing interim (effective) rather than proposed rules because the amendments to the Disaster Relief Act were effective immediately upon enactment (November 23, 1988). However, public comments are welcome and will be considered in adoption of the final rule.

These interim rules will be published in three phases. The subparts appearing here include individual assistance, public assistance, and certain unchanged provisions of hazard mitigation requirements. Subparts A, B, and C of this part, relating to general agency policy, the declaration process, and FEMA's new emergency assistance authorities, will be published as interim rules in a few weeks, along with Subpart N, covering the new hazard mitigation grant program. New 44 CFR Part 207, covering the Great Lakes planning grant, will be published separately. A related document containing a proposed rule to modify 44 CFR Part 206, Subpart M, relating to hazard mitigation planning requirements, will also be published separately.

Many sections of the Disaster Relief Act of 1974 have been amended, but some have not. In the supplementary information below, each section for which FEMA is today establishing interim rules (Subparts D, E, F, G, H, I, J, K, L, and M) will be discussed, whether changed or not, and a contact person will be named to provide further information on each subject. In all sections, including those which have not been changed, a new numbering system has been established, and conforming changes have been made. When published later, the document dealing with Subparts A, B, C, N, and Part 207, will complete interim rules to implement the new legislation. The Stafford Act is also published in this document, for the reader's reference, in the appendix.

General Information [Subpart A, Reserved]

The Stafford Act makes several changes to the section on generally applicable information (e.g., definitions and policy). Since many parts of the new program are affected, FEMA will include a new subpart covering general information in its later submission. This subpart is therefore reserved.

The Declaration Process [Subpart B, Reserved]

This subpart is also reserved for future publication. The Stafford Act makes technical changes to the declaration process, and FEMA will include them in the second phase of interim rulemaking.

Emergency Assistance [Subpart C, Reserved]

The Stafford Act authorizes emergency assistance only for essential work and services to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe, including debris removal and temporary housing. In addition, section 501(b) of the Stafford Act authorizes the President to make an emergency declaration without a request from a Governor when the primary responsibility for response to a particular situation rests with the Federal Government. Interim regulations for emergency declarations will be issued in the second phase of publication.

Temporary Housing Assistance (Subpart D)

The Stafford Act made several major changes to the Temporary Housing Assistance program, which have been incorporated in the regulations. They include:

1. The definition of adequate alternate housing has been changed to include the categories of the population identified in the new law.

2. The term "minimal repairs" which previously appeared in the Disaster Relief Act of 1974 has been changed to "home repairs." However, the dollar limitations established by the Associate Director, State and Local Programs and Support, for the purposes of authorizing such home repairs in lieu of other forms of housing assistance, have not been changed. They continue to be a minimum of $100 and a maximum of $5,000.

3. The paragraphs of the regulations which relate to the use of mobile homes have been modified to include the 75 percent Federal/25 percent State cost sharing on the construction of group sites, as required in section 408 of the Act. Temporary housing expenses which are not cost-shared, i.e., which are fully Federally funded, are also clarified.

4. The sections of the regulations on reconsiderations and termination of assistance have been combined and titled "Appeals." The only changes are to provide for a 60-day appeal period for applicants, as required by section 423 of the Stafford Act, and two paragraphs in the regulations which govern the prior disaster law, 44 CFR 205.52 (m) and (p), have been combined to form one appeal paragraph. FEMA's response time remains at 15 days from receipt of the appeal.

5. The period of temporary housing assistance has been increased from up to 12 months to up to 18 months.

6. With respect to the Stafford Act's requirements that applicants be notified of the assistance which can be provided, the regulations now specify that each applicant be provided with information regarding all forms of assistance,

specific criteria which must be met to qualify for each form, the applicable limitations, and how to request changes and file appeals.

7. The regulations now specify, in accordance with the law, that in providing temporary housing, consideration will be given to the location of schools, employment, and the location of any crops or livestock the applicant must tend.

8. Throughout the regulations the word "livability" has been substituted for "habitability." The meaning is the same in each case; the change was made only to make the regulations more understandable.

For further information on the temporary housing assistance program, contact F. Scott Martin at 202–646–3650.

Individual and Family Grant Programs (Subpart E)

The Stafford Act makes several changes to the IFG program, which have been incorporated in the regulations.

1. The maximum grant amount has been changed to $10,000. This amount will be adjusted at the beginning of each fiscal year to reflect changes in the Consumer Price Index for All Urban Consumers, published by the Department of Labor. This change creates the need for a corresponding change in the dollar value of the required flood insurance policy for housing and personal property grants where the applicant resides in a flood zone. The requirement will be for a policy to cover the grant amount. Currently, FEMA will require $7,000 building and $3,000 contents for a homeowner, and $10,000 contents for a renter. FEMA will continue to award a grant for the first year of the required 3-year policy. Public comments are welcome on whether FEMA should continue to require flood insurance coverage on the entire maximum grant amount.

2. The section on advance of the State's 25 percent share of the IFG program has been eliminated from the IFG regulations. The Stafford Act provides, in section 319, that the President may lend or advance the non-Federal share of any cost-shared assistance provided under the Act to an eligible applicant or State in certain defined circumstances. FEMA will publish the regulations implementing this new feature in Subpart A, General Information, in the next two months. It is worth noting here that the loan will now bear interest from the date of disbursement. In the past, interest was not assessed on IFG advances to States.

3. The Stafford Act changed the allowable administrative expenses from 3 percent to 5 percent. FEMA will provide the State the option of receiving 3 percent automatically, with no documentation requirement, or 5 percent if appropriate justification is submitted for the full amount. Public comments on this approach are welcome.

5. Changes to the duplication of benefits provisions (section 312 of the Stafford Act) have been incorporated into the IFG regulations. The State may make grants in advance of receipt of other assistance if the applicant has not received the other assistance to which they may be entitled by the time of application for IFG assistance.

For further information on IFG, contact Donna M. Dannels at 202–646–3660.

Other Individual Assistance (Subpart F)

Several other programs and provisions have been changed as a result of the Stafford Act.

1. Disaster unemployment assistance (DUA) has been substantially changed, as follows:

—The maximum assistance period has been reduced from 52 to 26 weeks from the disaster declaration date, to reflect current unemployment insurance practices.

—The feature which formerly allowed regular unemployment insurance recipients to get a DUA supplement for the same week to bring them up to the DUA maximum weekly benefit amount has been eliminated.

—Persons entitled to unemployment insurance benefits are not entitled to any DUA until their insurance benefits have expired, and then they may receive DUA only for the remainder of the 26-weeks-from-declaration time period.

—FEMA will no longer fund the "waiting week."

The Secretary of Labor has the delegated authority to implement the DUA program and to publish rules in accordance with general policy guidance from FEMA. FEMA has provided the above policy guidance to the Department, and the Secretary has agreed to publish amendments to 20 CFR Part 625 to effectuate the new Act. To replace a similar section published in old 44 CFR 205, a brief text is published at 206.141 for convenience of the reader.

For further information, contact Karen Keefer at 202–646–3658.

2. The Crisis Counseling Assistance and Training program has been changed in the following respects:

—Although the Stafford Act eliminates the explicit requirement that grants under this section should be made through the National Institute of Mental Health (NIMH), FEMA is making no changes with respect to NIMH involvement in the administration of this program.

—A 60-day period for the State to appeal FEMA's decision for both the "immediate services" and "regular program" portions of the crisis counseling program has been established, in accordance with the Stafford Act. To make the separate appeals processes distinct, FEMA is establishing an immediate services application submission period of 14 days after the declaration date.

—Documented eligible expenses are now reimbursable from the incident date, rather than the declaration date, as specified in section 424 of the Stafford Act. These expenses will be allowed under the immediate services portion of the program. In accordance with the grant criteria of the NIMH, under which the regular program funding is provided, expenses are allowable only from the date of the regular program grant award. To obtain reimbursement from the incident date, the State may apply for an immediate services grant.

—The regulations have been reorganized for the reader's convenience, to separate the "immediate services" and "regular program" provisions and to allow clearer explanations of the changes to each portion of the crisis counseling program.

For further information contact Donna M. Dannels at 202–646–3662.

3. Section 312 of the Stafford Act makes important changes to duplication of benefits policies. The regulations now state that FEMA will ensure uniformity in procedures established to prevent assistance duplication. They also provide that assistance given to individuals and families under the Act, and comparable assistance provided by States, local governments, and disaster assistance organizations (such as the American Red Cross), will not be considered as income for the recipients in any eligibility determinations made for Federally funded income assistance or resource-tested benefit programs (such as welfare or food stamp programs). Each of the assistance program regulations which are affected by section 312 have adopted language complying with this general provision; specifically, that Federal assistance may be provided by an agency prior to when it would normally be provided if the person has not received the other benefits to which he/she is entitled by time of application of the Federal assistance.

For more information contact Sharon A. Hordesky at 202–646–2778 or the program officer for the particular program.

No changes have been made to the regulations dealing with food commodities and disaster legal services.

Public Assistance Project Administration (Subpart G)

The Stafford Act and the "common rule," adopted by FEMA at 44 CFR Part 13, require a number of changes in the administration of public assistance grants. The most significant changes result from requirements of the "common rule" and are discussed first.

1. In accordance with the "common rule," FEMA has determined that States should be given as much flexibility and authority as possible in the management of the public assistance program. For many years FEMA has considered all funds approved for public assistance to be a grant to the State. Funds going to individual applicants have been considered subgrants. However, the method used by FEMA to process public assistance funds has not truly recognized the State as the grantee in that separate applications and supplements have been processed for subgrantees by FEMA. The issuance of 44 CFR Part 13 has required that changes be made in the method used to process public assistance grants. Although Part 13 was published in March 1988, FEMA did not publish proposed regulations covering the changes it required due to the fact that new legislation which would impact on FEMA's administration of the public assistance program was pending in Congress. Since FEMA believed that there would be new legislation, it would have been premature to publish a proposed "project administration" regulation before the legislation was enacted. By the time FEMA learned that Congress had passed the legislation and that the President had signed it, the effective date of Part 13 had already passed. Therefore, since Part 13 was effective on October 1, 1988, FEMA feels obligated to publish the changes that regulation required on an interim basis.

Part 13 establishes uniform administrative rules for Federal grants, one of which is that the grantee (the State) is the organization which is required to sign the grant application (Standard Form 424, Application for Federal Assistance) and administer all subgrants. In the past, FEMA has used a modified SF 424 as an application from eligible subgrantees. The grantee did not sign the individual grant applications and was not responsible for administering subgrants. Thus, a change is required in FEMA's procedures for processing public assistance grants to comply with Part 13. The change required is not extensive as far as procedures for the initial processing of grants is concerned, but significant changes are required in the area of State administration of public assistance grants. The changes are discussed below:

—FEMA will continue to prepare, review, and process Damage Survey Reports (DSR's) in the same manner that they have been in the past, up to the time that DSR's are combined into a grant or supplement. At that time FEMA will combine all DSR's that are ready for approval and approve one basic grant or one supplement instead of separate grants or supplements for each subgrantee. The State will be the grantee, and DSR's covering all eligible work related to the disaster will be approved for the State. The State will approve subgrants to individual applicants using FEMA approved DSR's as the basis for approval and will be responsible for overall management of the grant funds.

—The State will be responsible for managing the day-to-day operations of the grant and subgrant supported activities. This will include monitoring the activities of subgrantees to assure compliance with FEMA requirements and that performance goals are being met, as well as reporting to FEMA on performance and financial aspects on a quarterly basis. The State will be required to develop procedures through which it will manage the program and which will form the basis for FEMA approval of funds to cover State management costs.

—The State has been given new authority to approve extensions of time for public assistance projects. Since most time extension requests in the past have been justified and FEMA has ultimately approved them, sending them to FEMA for approval merely adds administrative cost.

—The State will be required to review all claims (partial claims covering more than one subgrantee will be accepted), recommend to FEMA an amount for approval, and certify that all funds have been expended in accordance with the FEMA–State Agreement.

—The State must ensure that all audits required by the Single Audit Act of 1984 are performed. The State will be required to review such audits completed for each subgrantee and, if adverse findings are reported in any audit, the State must ensure that appropriate action is taken and report that action to FEMA. The State will also be required to have a single audit performed on State operations and submit a copy of such an audit to the FEMA Inspector General.

2. The Stafford Act authorizes Federal funding for projects costing less than $35,000 (adjusted annually in accordance with the Consumer Price Index) based on the Federal estimate of cost of such small projects. Therefore, the criteria for payment of claims has been changed. FEMA estimates that more than 90 percent of all public assistance projects will meet the criteria for small projects and final payment may be made upon approval of the project, thereby getting funds to disaster affected communities much sooner.

3. Funding options under the Stafford Act are very similar to the options available previously. The "Grant-in-lieu" option remains the same but has been renamed "Improved Project." "Flexible funding" has also been renamed and is now called "Alternate Project." Previously, when flexible funding was selected, all permanent restorative projects approved for an applicant had to be included. Therefore, very few applicants took that option. The Stafford Act authorizes applicants to select the alternate project option on a project by project basis, thereby giving the applicant much greater flexibility. There is still a 10 percent reduction in eligible costs when this option is selected, but it is only for those individual projects which are selected, not for all permanent work.

4. A change in the appeals procedures has been made in accordance with the Stafford Act. The grantee (the State) is given 60 days to submit an appeal of any FEMA decision. FEMA then has a maximum of 90 days in which to make a decision on that appeal. Since a proper determination cannot be made without all related information, the regulations provide that the 90 day period will start upon receipt of an appeal and all related information. Also, the regulations allow the FEMA Associate Director, upon agreement of the State, to refer appeals of a highly technical nature to an independent scientific or technical group for review. In such a case FEMA and the State must mutually agree to a longer decision period and to share the cost of review by the independent group with FEMA. This approach will provide FEMA and the State with the advantage of an independent review without FEMA giving up its ultimate responsibility to make final determinations relative to the public assistance program.

For further information contact John Lundberg at 202–646–3688.

Public Assistance Eligibility

(Subpart H)

The enactment of the Stafford Act brought about a number of changes to eligibility requirements for assistance to State and local governments and eligible private nonprofit organizations. In addition, the implementation of the new "common rule" for grant administration changed eligibility requirements as well.

Changes to individual provisions are discussed in the following paragraphs in generally the same sequence as they appear in the existing 44 CFR Part 205 Subpart E regulations.

1. The term "immediate threat," which is used to define the extent of emergency protective measures, now has a specific definition although the term was previously used without definition. Previously, emergency protective measures to protect against an event which could be expected to occur not less than every 5 years were eligible. Something which might happen in 5 years cannot really be considered to be in the "immediate" future or of an emergency nature. Therefore, "immediate threat" is redefined as a threat from an event which can be reasonably expected to occur within 1 year. In practical application there is very little difference between a protective facility to guard against 1-year storm and one to guard against a 5-year storm.

2. The definition of "predisaster condition" is deleted because its use is covered by the requirement that eligible work must be disaster related. The previous usage of the term was redundant and is no longer used in the regulation.

3. The definition of "educational facilities" under "private nonprofit facility" is changed so that the only exclusion is for facilities used primarily for religious purposes or instruction.

4. Private nonprofit irrigation districts would be eligible the same as other private nonprofit utilities. Support facilities for private nonprofit emergency organizations would also be eligible.

5. A sixth category of private nonprofit facility has been added in the Stafford Act. The new category is defined as "other private nonprofit facilities which provide essential services of a governmental nature to the general public." This will include facilities such as: community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public. This new category of private nonprofit facility will include most facilities which previously qualified under the criteria for "public entities." Other public entities will continue to be eligible for assistance when their applications are submitted by an eligible applicant. Many facilities serving a rural community or unincorporated town or village may also qualify for assistance under this new category.

6. The definition of those standards which may be included in eligible work now includes the upgrading of a facility when required by a State or Federal agency regulation.

7. The criteria to be used when considering assistance which may be available from another Federal agency is changed. Previously, if an agency had the authority to perform an item of work or grant assistance but did not have funds available at the time, FEMA would step in to grant the assistance. FEMA would grant assistance regardless of the reason the funds were unavailable. The new policy is that when an agency has the specific authority to restore facilities or grant assistance, FEMA will *not* grant assistance regardless of the availability of funds. FEMA believes it should not override the decisions made by the Congress or the Administration not to fund another agency's program from money appropriated to the President's Disaster Fund.

8. Previous regulations covering facilities leased to or from an eligible applicant provided that repairs were eligible for assistance if they were the responsibility of the applicant under the lease (§ 205.73(c)). This policy is not being changed. However, this section was redundant in view of the general requirement that eligible work must be the responsibility of the applicant. Therefore, the section has been deleted from the revised regulation.

9. The paragraph discussing assurances (§ 205.73(d)), has been deleted because the assurances referred to are primarily procedural in nature and are dealt with in Subpart G, Project Administration, which is being published concurrently with this subpart.

10. Under the law, two types of applicants, public entities and rural or unincorporated communities, are required to apply through a State or political subdivision of a State. Under new procedures in Subpart G, Public Assistance Project Administration, the State will be making a single application to FEMA on behalf of all subgrantees. Therefore, the requirement in the law is met and the separate requirement in the regulations is removed.

11. The eligibility criteria for facilities serving an unincorporated rural community are changed slightly. The facility must be open for the use of the general public. For example, a road system or any other facility owned and maintained by a private nonprofit neighborhood association which could be open to the public would not be eligible if its use was restricted to residents in that neighborhood. On the other hand, facilities such as a water or sewer system which must be connected to a residence and therefore cannot be open to the public, would not be ineligible because of this restriction.

12. The discussion of grants-in-lieu, which is a funding mechanism, and time limitations, which is a grant administration matter, are moved to Subpart G. A "grant-in-lieu" is now referred to as an "improved project" in that subpart.

13. Work which is of the same type as maintenance is no longer discussed separately, as had been the case in 44 CFR 205.73(h). The determination of what was "of disaster scope and magnitude" was difficult to make and often resulted in delays in approving eligible work. The use of the threshold of a $250 dollar minimum DSR will still screen out the truly insignificant damages.

14. Debris removal is now covered as a separate section rather than a subheading under Emergency Work. The general emergency work section is removed because debris removal and emergency protective measures which are the two subdivisions of emergency work have slightly different eligibility criteria. These criteria for debris removal and emergency protective measures are discussed in their respective subsections. Debris removal which is necessary to eliminate a threat to lives, public health or safety, or of significant damage to improved property, is eligible. In addition, if disaster related debris is widespread on public or private property, and its removal is necessary to ensure the economic recovery of the community as a whole, it may be eligible.

15. The removal of debris from drainage facilities is no longer covered separately in this subsection. Under the general criteria for restoration of facilities, debris in drainage channels, reservoirs or debris basins will be eligible if the facility is actively used and maintained.

16. When emergency protective measures are being performed to eliminate or lessen an immediate threat of additional damage, such work is limited to that necessary to protect against an immediate threat. The change in the definition of "immediate threat" is

discussed earlier. Such work must also be cost effective when public or private property is to be protected.

17. In the permanent restoration of facilities, much of the specific guidance of previous regulations has been eliminated in favor of more general requirements. The individual categories of facility are no longer discussed separately. The general guidance applies equally to all types of facilities almost without exception. The few exceptions are noted in the regulation.

—The first change is in the area of standards. If an applicant is willing to adopt a standard, either of its own development or based upon a national standard, FEMA will apply that standard to the restoration of the damaged facility. The cost of that standard is an eligible cost. This practice is basically the same as the old procedure of having the Associate Director prescribe a standard to be adopted by the applicant. The new procedure, however, places emphasis on the applicant's initiative in keeping with Executive Order 12612 on Federalism.

—In the restoration of bridges, FEMA will no longer require construction to FEMA's bridge width standards. Reconstruction will be to the standard which the applicant was using at the time of the disaster or one adopted prior to FEMA's approval of assistance. In the absence of a standard, reconstruction will be to predisaster condition.

—The discussion of specific hazard mitigation measures is replaced with the general statement that the costs of mitigation measures required by FEMA are an eligible cost. Measures required after review of floodplain management, environmental, or Coastal Barrier Resources Act requirements are examples of these. The new legislation specifies that these costs are eligible. FEMA will review projects for mitigation opportunities and may require that cost effective mitigation measures be incorporated into the restoration of the facility.

18. In the area of cost eligibility, most of the discussion of specific types of costs is now covered in 44 CFR Part 13 (the "common rule") and the associated OMB Circular A–87, Revised. Therefore, those items are removed from this subpart. Significant changes in eligible costs as a result of the new legislation are the inclusion of fringe benefits for an applicant's own employees, and allowances for administrative expenses for individual applicants and for the State to manage the public assistance program in accordance with the "common rule." In the Stafford Act, at section 406(f), there is an administrative allowance to be calculated as a percentage of certain assistance. However, the base to which the percentage is applied is different for subgrantees and grantees. In section 406(f)(1)(A) through (D) the percentage for subgrantees is applied to the net eligible costs. Net eligible costs are defined in section 406(e) as the total cost of restoration. In section 406(f)(2)(A) through (D), the percentage for grantees is applied to "such total amount," referring back to "total amount of assistance provided" in 406(f)(2). The term "assistance provided" means the Federal share provided to the grantee or subgrantee. Secondly, in these same two subparagraphs, 406(f)(1) and (2), the designation of what is covered by these indirect cost allowances is different for subgrantees and for the grantee. For subgrantees, the administrative allowance covers all costs of requesting, obtaining, and administering the grant. For the grantee, the administrative allowance covers only extraordinary costs of certain activities. Therefore, there is an additional eligible direct cost item to cover costs for the State to manage the program.

For further information contact Charles Stuart at 202–646–3691.

Public Assistance Insurance Requirements (Subpart I)

The new Subpart I, Public Assistance Insurance Requirements, reflects an important limitation of Federal assistance described in the Stafford Act. It also condenses what were two subparts—General Insurance Requirements and Flood Insurance Requirements—into one subpart. Other changes have been made to achieve consistency with the "common rule," to more accurately interpret existing statutory language, and to clarify regulatory intent.

1. The regulations now provide a strong incentive for government and private nonprofit entities to purchase flood insurance for their insurable facilities. In accordance with section 406(d) of the Stafford Act, all buildings and their contents in an identified flood plain will be treated as if they were fully covered by the standard flood insurance policy available through the NFIP. As such, the Federal estimate of eligible damages will be reduced by the maximum amount of the insurance proceeds which would have been received had the building and contents been fully covered. This provision becomes effective on May 22, 1989. In the meantime, FEMA will highlight its importance in a separate **Federal Register** notice, provide written notice to each community participating in the National Flood Insurance Program, contact government associations, and take other reasonable measures to disseminate this information.

It should be noted that, in accordance with section 406(d)(3) of the Act, private nonprofit facilities in special flood hazard areas which are not covered by flood insurance solely because of the local government's failure to participate in the National Flood Insurance Program (NFIP) are exempted from this reduction. However, even though this exemption is reflected in § 206.253(b)(2), it is misleading. This is because the Flood Disaster Protection Act of 1973 prohibits Federal assistance in special flood hazard areas of nonparticipating communities. Therefore, where local governments have opted not to participate in the NFIP, private nonprofit organizations can not acquire NFIP-issued flood insurance for their flood prone facilities. Consequently, they will be unable to certify that they will obtain and maintain flood insurance for their flood-damaged facilities. An inability to make such a certification precludes such private nonprofit organizations from receiving assistance under the Stafford Act. However, the host community has the option of qualifying for and joining the NFIP within 6 months of the disaster declaration. The operator of the private nonprofit facility could then purchase the required flood insurance and become eligible for assistance.

2. Consistent with revised OMB policy, as expressed on the SF 424, Application for Federal Assistance, insurance will not be required for grants associated with DSR estimates of less than $10,000. This minimum does not in any way affect the reduction of Federal assistance described above.

3. Section 311 (b) of the Stafford Act, which is unchanged from section 314 of the Disaster Relief Act of 1974, stipulates that no further assistance may be provided for a facility for which the insurance required as a condition of previous Federal disaster assistance was not purchased or properly maintained. We had previously interpreted this stipulation as allowing for reduced assistance; that is, assistance could be provided, but had to be reduced by the amount of insurance which should have been carried by the facility. On review of this section, we found that, contrary to our past interpretation, there is no basis for providing even reduced assistance where the insurance has not been purchased or properly maintained. Section 206.253(a) incorporates this finding. Because this is a provision of the Disaster Relief Act of 1974 (before the current amendments) which was

carried forward unchanged in the Stafford Act, FEMA believes it is necessary to make the change effective immediately. Therefore, this change is being published in this interim rule.

For further information contact Alex Burns at 202–646–3670.

Coastal Barrier Resources Act (Subpart J)

This subpart required only conforming changes as a result of the Stafford Act or implementation of the "common rule." Its sections have been renumbered. For more information contact Charles Stuart at 202–646–3691.

Community Disaster Loans (Subpart K)

This subpart was recently revised under 44 CFR Part 205, Subpart F. It was issued as a proposed rule on April 28, 1987 (52 FR 15348) and as a final rule on April 18, 1988 (53 FR 12681). For this publication, this subpart required only conforming changes as a result of the Stafford Act or the "common rule." Its sections have been renumbered. For more information contact Eugene Morath at 202–646–3683.

Fire Suppression Assistance (Subpart L)

This subpart required conforming changes as a result of the Stafford Act. The paragraphs were renumbered in accordance with the new numbering system for Part 206. Section 206.394, Cost Eligibility, was revised to delete cost principles covered in the "common rule." However, program specific cost eligibility items considered necessary for developing fire suppression assistance grants were retained. Section 206.395, Grant Administration, was revised to delete uniform grant administration procedures in the "common rule." However, since Subpart L is activated without a major disaster declaration, the grant administration section was retained to incorporate other CFR subparts which normally are effective upon a major disaster declaration.

For further information contact Eugene Morath at 202–646–3683.

Hazard Mitigation Planning (Subpart M)

This subpart required no substantive changes as a result of the Stafford Act or the "common rule." However, to distinguish this subpart from the new hazard mitigation grant program, as provided in section 404 of the Stafford Act, the name has been changed from "Hazard Mitigation" (as it appears in Subpart M of 44 CFR Part 205) to the above name. It has also been renumbered, and conforming changes have been made. A proposal to amend this subpart will be made soon, to be based on refinements and experience over the past few years. For more information contact Bruce Baughman at 202–646–3681.

Hazard Mitigation Grant Program [Subpart N, Reserved]

Environmental Considerations

The majority of the provisions of the interim rule have either been assessed by prior environmental assessments or represent actions which are categorical exclusions pursuant to FEMA's regulation at 44 CFR Part 10, Environmental Considerations. An environmental assessment covering the remaining items led to the determination that there will be no significant impact caused by implementation of this interim rule and that the preparation of an Environmental Impact Statement is not required. Environmental assessments are on file and may be inspected or obtained at the Office of Disaster Assistance Programs for each program area, or at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating this rule, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O.12612, 52 FR 41685). The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirement in 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that agency administrative provisions in regulations be consistent with Part 13. There are significant changes in grant administration procedures which have Federalism impacts and therefore, a Federalism Assessment has been prepared. Interested parties may inspect or obtain copies of this assessment at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Reporting Requirements

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et. seq.*, and has assigned the following OMB Control Numbers:

—For the IFG program: 3067–0146 and 3067–0163
—For the crisis counseling program: 3067–0166
—For the temporary housing assistance program:
3067–0009
3067–0043
3067–0124
—For the public assistance program:
3067–0026
3067–0033
3067–0034
3067–0048
3067–0066
0348–0006

List of Subjects in 44 CFR Part 206

Disaster Assistance: general, the declaration process, emergency assistance, individual assistance, public assistance, the Coastal Barrier Resources Act, community disaster loans, fire suppression, hazard mitigation, and Great Lakes planning assistance.

Accordingly, FEMA is amending Chapter I, Subchapter D, of Title 44 as follows:

1. A new Part 206 is added to read as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart A—General [Reserved]

Subpart B—The Declaration Process [Reserved]

Subpart C—Emergency Assistance [Reserved]

Subpart D—Temporary Housing Assistance

Sec.
206.101 Temporary housing assistance.
206.102 through 206.130 [Reserved]

Subpart E—Individual and Family Grant Programs

Sec.
206.131 Individual and family grant programs.
206.132 through 206.140 [Reserved]

Subpart F—Other Individual Assistance

206.141 Disaster unemployment assistance.
206.142 through 206.150 [Reserved]

Authority: 42 U.S.C. 5121; Reorganization Plan No. 3 of 1978 (3 CFR, 1979, p. 329); Executive Order 12148 (3 CFR, 1980, p. 412); the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93-288, as amended by Pub. L. 100-707.

Subpart A—General [Reserved]

Subpart B—The Declaration Process [Reserved]

Subpart C—Emergency Assistance [Reserved]

Subpart D—Temporary Housing Assistance

§ 206.101 Temporary housing assistance.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 408 of the Stafford Act.

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related unlivability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the livability of the primary residence. FEMA has also determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature. Temporary housing will normally consist of a check to cover housing-related costs wherever possible.

(c) *Definitions.*

(1) "Adequate alternate housing" means housing that:

(i) Accommodates the needs of the occupants.

(ii) Is within reasonable commuting distance of work, school, or agricultural activities which provide over 25% of the household income.

(iii) Is within the financial ability of the occupant in the realization of a permanent housing plan.

(2) "Effective date of assistance" means the date the eligible applicant received temporary housing assistance but, where applicable, only after appropriate insurance benefits are exhausted.

(3) "Essential living area" means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) "Fair market rent" means a reasonable amount to pay in the local area for the size and type of accommodations which meets the applicant's needs.

(5) "Financial ability" is the determination of the occupant's ability to pay housing costs. The determination is based upon the amount paid for housing before the disaster, provided the household income has not changed subsequent to or as a result of the disaster or 25 percent of gross post disaster income if the household income changed as a result of the disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Director.

(6) "Household" means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses, or part-time residents who were not present at the time of the disaster but who are expected to return during the temporary housing period.

(7) "Housing costs" means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

(8) "Occupant" means an eligible applicant residing in temporary housing provided under this section.

(9) "Owner-occupied" means that the residence is occupied by: the legal owner; a person who does not hold formal title to the residence and pays no rent but is responsible for the payment of taxes, or maintenance of the residence; or a person who has lifetime occupancy rights with formal title vested in another.

(10) "primary residence" means the dwelling where the applicant normally lives during the major portion of the calendar year, a dwelling which is required because of proximity to employment, or to agricultural activities as referenced in paragraph (c)(1)(ii) of this section.

(d) *Duplication of benefits*—(1) *Requirement to avoid duplication.* Temporary housing assistance shall not be provided to an applicant if such assistance has been provided by any other source. If any State or local government or voluntary agency has provided temporary housing, the assistance under this section begins at the expiration of such assistance, and may continue for a period not to exceed 18 months from the date of declaration, provided the criteria for continued assistance in paragraph (k)(3) of this section are met. If it is determined that temporary housing assistance will be provided under this section, notification shall be given those agencies which have the potential for duplicating such assistance. In the instance of insured applicants, temporary housing assistance shall be provided only when:

(i) Payment of the applicable benefits has been significantly delayed;

(ii) Applicable benefits have been exhausted;

(iii) Applicable benefits are insufficient to cover the temporary housing need; or

(iv) Housing is not available on the private market.

(2) *Recovery of funds.* Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing assistance provided. In no event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with agency procedures for debt collection.

(e) *Applications*—(1) *Application period.* Applications for temporary housing assistance shall be accepted for a 60-day period following the date of a declaration of a major disaster or emergency, unless additional time for submission of applications is authorized by the Regional Director in order to achieve uniformity of application periods in contiguous States. After the established period, applications shall be accepted; however, processing shall not be completed unless authorized by the Regional Director on a case-by-case basis.

(2) *Household composition.* Members of a household shall be included on a single application and be provided one temporary housing residence unless it is determined by the Regional Director that the size of the household requires that more than one residence be provided.

(f) *General eligibility guidelines.* Temporary housing assistance may be made available to those applicants who, as a result of a major disaster or emergency declared by the President, are qualified for such assistance.

(1) *Conditions of eligibility.* Temporary housing assistance may be provided only when *both* of the following conditions are met:

(i) The applicant's primary residence has been made unlivable or the applicant has been displaced as the result of a major disaster or emergency because:

(A) The residence has been destroyed, essential utility service has been interrupted, or the essential living area has been damaged as a result of the disaster to such an extent as to constitute a serious health or safety hazard which did not exist prior to the disaster. The Regional Director shall prepare additional guidelines when necessary to respond to a particular disaster;

(B) The residence has been made inaccessible as a result of the incident to the extent that the applicant cannot reasonably be expected to gain entry due to the disruption or destruction of transportation routes, other impediments to access, or restrictions placed on movement by a responsible official due to continued health and safety problems;

(C) The owner of the applicant's residence requires the residence to meet their personal needs because the owner's predisaster residence was made unlivable as a result of the disaster;

(D) Financial hardship resulting from the disaster has led to eviction or dispossession; or

(E) Other circumstances resulting from the disaster, as determined by the Regional Director, prevent the applicant from occupying their predisaster primary residence.

(ii) Insured applicants have made every reasonable effort to secure insurance benefits, and the insured has agreed to repay FEMA from whatever insurance proceeds are later received, pursuant to paragraph (d)(2) of this section.

(2) *Conditions of ineligibility.* Except as provided for in section 408(b), Temporary Housing Assistance shall not be provided:

(i) To an applicant who is displaced from other than their primary residence; or

(ii) When the residence in question is livable, i.e., only minor damage exists and it can reasonably be expected to be repaired by the applicant/owner or the landlord; or

(iii) When the applicant owns a secondary or vacation residence, or unoccupied rental property which meets their temporary housing needs; or

(iv) To an applicant who has adequate rent-free housing accommodations; or

(v) To an applicant who has adequate insurance coverage and there is no indication that benefits will be delayed; or

(vi) When a late application is not approved for processing by the Regional Director; or

(vii) To an applicant who evacuated the residence in response to official warnings solely as a precautionary measure, and who is able to return to the residence immediately after the incident (i.e., the applicant is not otherwise eligible for temporary housing assistance).

(g) *Forms of Temporary Housing Assistance.* (1) Temporary Housing Assistance is normally provided in the form of a check to cover the cost of rent or essential home repairs. The exceptions to this are when existing rental resources are not available and repairs to the home will not make it livable in a reasonable period of time, or when the eligible applicant is unable to physically leave the home due to the need to tend crops or livestock.

(i) Government-owned, private, and commercial properties. When an eligible applicant is unable to obtain an available temporary housing unit, FEMA may enter into a leasing agreement for the eligible applicant. Rent payments shall be in accordance with the fair market rent (FMR) rates established for each operation for the type and size residence.

(ii) Transient accommodations. Immediately following a Presidentially declared major disaster or emergency, disaster victims are expected to stay with family or friends without FEMA assistance, or to make use of mass shelters to the fullest extent possible for short-term housing. Transient accommodations may be provided when

individual circumstances warrant such assistance for only a short period of time or pending provision of other temporary housing resources. Transient accommodations may be provided for up to 30 days unless this period is extended by the Regional Director. Authorized expenditures for transient accommodations shall be restricted to the rental cost including utilities except for those which are separately metered. Payment for food, telephone, or other similar services is not authorized under this section.

(2) Mobile homes, travel trailers, and other manufactured housing units. Government-owned or privately owned mobile homes, travel trailers, and other manufactured housing units may be placed on commercial, private, or group sites. The placement must comply with applicable State and local codes and ordinances as well as FEMA'S regulations at 44 CFR Part 9, Floodplain Management and Protection of Wetlands, and the regulations at 44 CFR Part 10, Environmental Considerations.

(i) A commercial site is a site customarily leased for a fee because it is fully equipped to accommodate a housing unit. In accordance with section 408(a)(2)(B), the Associate Director has determined that leasing commercial sites at Federal expense is in the public interest. When the Regional Director determines that upgrading of commercial sites or installation of utilities on such sites will provide more cost-effective, timely, and suitable temporary housing than other types of resources, they may authorize such action at Federal expense.

(ii) A private site is a site provided or obtained by the applicant at no cost to the Federal Government. Also in accordance with section 408(a)(2)(B), the Associate Director has determined that the cost of installation or repairs of essential utilities on private sites is authorized at Federal expense when such actions will provide more cost-effective, timely, and suitable temporary housing than other types of resources.

(iii) A group site is a site which accommodates two or more units. In accordance with section 408(a)(2)(A), locations for group sites shall be provided by State or local government complete with utilities. However, the Associate Director may authorize development of group sites, including installation of essential utilities, by the Federal Government, based on a recommendation from the Regional Director; provided, however, that the Federal expense is limited to 75 percent of the cost of construction and development (including installation of utilities). In accordance with section 408(a)(4) of the Stafford Act, the State or local government shall pay any cost which is not paid for from the Federal share, including long-term site maintenance such as snow removal, street repairs and other services of a governmental nature.

(3) Temporary mortgage and rental payments. Assistance in the form of mortgage or rental payments may be paid to or be provided on behalf of eligible applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice. The purpose of such notice is to notify a person of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the person's dispossession or eviction. Applications for this type of assistance may be filed for up to 6 months following the date of declaration. This assistance may be provided for a period not to exceed 18 months or for the duration of the period of financial hardship, as determined by the Regional Director, whichever is less. The location of the residence of an applicant for assistance under this section shall not be a consideration of eligibility.

(4) Home repairs. Repairs may be authorized to quickly repair or restore to a livable condition that portion of or areas affecting the essential living area of, or private access to, an owner-occupied primary residence which was damaged as a result of the disaster. Installation of utilities or conveniences not available in the residence prior to the disaster shall not be provided. However, repairs which are authorized shall conform to applicable local and/or State building codes; upgrading of existing damaged utilities may be authorized when required by these codes.

(i) *Options for repairs.* Eligible applicants approved for repairs may be assisted through one or a combination of the following methods:

(A) Cash payment. Payment shall be limited to the reasonable costs for the repairs and replacements in the locality, as determined by the Regional Director. This will be the method normally used, unless unusual circumstances warrant the methods listed under paragraph (g)(4) (i)(B) or (C) of this section.

(B) Provision of materials and replacement items.

(C) Government awarded repair contracts when authorized by the Associate Director.

(ii) *Feasibility.* Repairs may be provided to those eligible applicants:

(A) Who are owner-occupants of the residence to be made livable;

(B) Whose residence can be made livable by repairs to the essential living area within 30 days following the feasibility determination. The Regional Director may extend this period for extenuating circumstances by determining that this type of assistance is still more cost effective, timely and otherwise suitable than other forms for temporary housing; and

(C) Whose residence can be made livable by repairs to the essential living area, the cost of which do not exceed the dollar limitations established by the Associate Director. The Regional Director may, on a case-by-case basis, waive the dollar limitations when repairs are more cost effective and appropriate than other forms of housing assistance or when extenuating circumstances warrant.

(iii) *Scope of work.* The type of repair or replacement authorized may vary depending upon the nature of the disaster. Items will be repaired where feasible or replaced only when necessary to insure the safety or health of the occupant. Replacement items shall be of average quality, size, and capacity taking into consideration the needs of the occupant. Repairs shall be disaster related and shall be limited to:

(A) Repairs to the plumbing system, including repairs to or replacement of fixtures, providing service to the kitchen and one bathroom;

(B) Repairs to the electrical system providing service to essential living areas, including repairs to or replacement of essential fixtures;

(C) Repairs to the heating unit, including repairs to duct work, vents, and integral fuel and electrical systems. If repair or replacement through other forms of assistance cannot be accomplished before the start of the season requiring heat, home repairs may be authorized by the Regional Director when an inspection shows that the unit has been damaged beyond repair, or when the availability of necessary parts or components makes repair impossible;

(D) Repairs to or replacement of essential components of the fuel system to provide for cooking;

(E) Pumping and cleaning of the septic system, repairs to or replacement of the tank, drainfield, or repairs to sewer lines;

(F) Flushing and/or purifying the water well, and repairs to or replacement of the pump, controls, tank, and pipes;

(G) Repairs to or replacement of exterior doors, repair of windows and/or screens needed for health purposes;

(H) Repairs to the roof, when the damages affect the essential living area;

(I) Repairs to interior floors, when severe buckling or deterioration creates a serious safety hazard;

(J) Blocking, leveling, and anchoring of a mobile home; and reconnecting and/or resetting mobile home sewer, water, electrical and fuel lines, and tanks;

(K) Emergency repairs to private access routes, limited to those repairs that meet the minimum safety standards and using the most economical materials available. Such repairs are provided on a one-time basis when no alternative access facilities are immediately available and when the repairs are more cost effective, timely or otherwise suitable than other forms of temporary housing.

(L) Repairs to the foundation piers, walls or footings when the damages affect the structural integrity of the essential living area;

(M) Repairs to the stove and refrigerator, when feasible; and

(N) Elimination of other health and safety hazards or performance of essential repairs which are authorized by the Regional Director as not available through emergency services provided by voluntary or community agencies, and cannot reasonably be expected to be completed on a timely basis by the occupant without FEMA assistance.

(iv) Requirements of the Flood Disaster Protection Act. FEMA has determined that flood insurance purchase requirements need not be imposed as a condition of receiving assistance under paragraph (g)(4) of this section. Repair recipients will normally receive assistance for further repairs from other programs which will impose the purchase and maintenance requirements. Home repairs may not be provided in Zones A or V of a sanctioned or suspended community except for items that are not covered by flood insurance.

(h) *Appropriate form of temporary housing.* The form of temporary housing provided should not exceed occupants' minimum requirements, taking into consideration items such as timely availability, cost effectiveness, permanent housing plans, special needs (handicaps, the location of crops and livestock, etc.) of the occupants, and the requirements of FEMA'S floodplain management regulations at 44 CFR Part 9. An eligible applicant shall receive one form of temporary housing, except for transient accommodations or when provision of an additional form is in the best interest of the Government. An eligible applicant is expected to accept the first offer of temporary housing; unwarranted refusal shall result in forfeiture of temporary housing assistance. Existing rental resources and home repairs shall be utilized to the fullest extent practicable prior to provision of government-owned mobile homes.

(i) *Utility costs and security deposits.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupants responsibility. When authorized by the Regional Director, the Federal Government may pay security deposits; however, the owner or occupant shall reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance is terminated.

(j) *Furniture.* An allowance for essential furniture may be provided to occupants when such assistance is required to occupy the primary or temporary housing residence. However, loss of furniture does not in and of itself constitute eligibility for temporary housing assistance. Luxury items shall not be provided.

(k) *Duration of assistance*—(1) *Commencement.* Temporary housing assistance may be provided as of the date of the incident of the major disaster or emergency as specified in the **Federal Register** notice and may continue for 18 months from the date of declaration. An effective date of assistance shall be established for each applicant.

(2) *Continued assistance.* Predisaster renters normally shall be provided no more than 1 month of assistance unless the Regional Director determines that continued assistance is warranted in accordance with paragraph (k)(3) of this section. All other occupants of temporary housing shall be certified eligible for continued assistance in increments not to exceed 3 months. Recertification of eligibility for continued assistance shall be in accordance with paragraph (k)(3) of this section, taking into consideration the occupant's permanent housing plan. A realistic permanent housing plan shall be established for each occupant requesting additional assistance no later than at the time of the first recertification.

(3) *Criteria for continued assistance.* A temporary housing occupant shall make every effort to obtain and occupy permanent housing at the earliest possible time. A temporary housing occupant will be required to provide receipts documenting disaster related housing costs and shall be eligible for continued assistance when:

(i) Adequate alternate housing is not available;

(ii) The permanent housing plan has not been realized through no fault of the occupant; or

(iii) In the case of FEMA-owner leases, the occupant is in compliance with the terms of the lease/rental agreement.

(l) *Period of assistance.* Provided the occupant is eligible for continued assistance, assistance shall be provided for a period not to exceed 18 months from the declaration date.

(m) *Appeals.* Occupants shall have the right to appeal a program determination in accordance with the following:

(1) An applicant declared ineligible for temporary housing assistance, an applicant whose application has been cancelled for cause, an applicant whose application has been refused because of late filing, and an occupant who received a direct housing payment but is not eligible for continued assistance in accordance with paragraph (k) of this section, shall have the right to dispute such a determination within 60 calendar days following notification of such action. The Regional Director shall reconsider the original decision within 15 calendar days after its receipt. The appellant shall be given a written notice of the disposition of the dispute. The decision of the Regional Director is final.

(2) An occupant who has been notified that his/her request to purchase a mobile home or manufactured housing unit or that a request for an adjustment to the sales price has been denied shall have the right to dispute such a determination within 60 business days after receipt of such notice. The Regional Director shall reconsider the original decision within 15 calendar days after receipt of the appeal. The appellant shall receive written notice of the disposition of the dispute. The decision of the Regional Director is final.

(3) Termination of assistance provided through a FEMA lease agreement shall be initiated with a 15-day written notice after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Director including, but not limited to, the fair market rental for the temporary housing residence.

(i) *Grounds for termination.* Temporary housing assistance may be terminated for reasons including, but not limited to the following:

(A) Adequate alternate housing is available to the occupant(s);

(B) The temporary housing assistance was obtained either through misrepresentation or fraud; or

(C) Failure to comply with any term of the lease/rental agreement.

(ii) *Termination procedures.* These procedures shall be utilized in all instances except when a State is administering the Temporary Housing Assistance program. States shall be subject to their own procedures provided they afford the occupant(s) with due process safeguards described in paragraph (m)(2)(v)(B) of this section.

(A) *Notification to occupant.* Written notice shall be given by FEMA to the occupant(s) at least 15 days prior to the proposed termination of assistance. This notice shall specify: the reasons for termination of assistance/occupancy; the date of termination, which shall be not less than 15 days after receipt of the notice; the administrative procedure available to the occupant if they wish to dispute the action; and the occupant's liability after the termination date for additional charges.

(B) *Filing of appeal.* If the occupant desires to dispute the termination, upon receipt of the written notice specified in paragraph (m)(2)(i) of this section, he/she shall present an appeal in writing to the appropriate office in person or by mail within 60 days from the date of the termination notice. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(C) *Response to appeal.* If a hearing pursuant to paragraph (m)(2)(ii) of this section has not been requested, the occupant has waived the right to a hearing. The appropriate program official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the appeal.

(D) *Request for hearing.* If the occupant requests a hearing pursuant to paragraph (m)(2)(ii) of this section, FEMA shall schedule a hearing date within 10 business days from the receipt of the appeal, at a time and place reasonably convenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(E) *Hearing—(1) Hearing officer.* The hearing shall be conducted by a Hearing Officer, who shall be designated by the Regional Director, and who shall not have been involved with the decision to terminate the occupant's temporary housing assistance, nor be a subordinate of any individual who was so involved.

(2) Due process. The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence, and the right to a written decision.

(3) Failure to appear. If an occupant fails to appear at a hearing, the Hearing Officer may make a determination that the occupant has waived the right to a hearing, or may, for good cause shown, postpone the hearing for no more than 5 business days.

(4) Proof. At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that termination of assistance is appropriate. The occupant shall have the right to present evidence and arguments in support of their complaint, to controvert evidence relied on by FEMA, and to cross examine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer, and any evidence pertinent to the facts and issues raised may be received without regard to its admissibility under rules of evidence employed in formal judicial proceedings.

(F) *Decision.* The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of findings and conclusions together with the reasons therefor, concerning all material issues raised by the complainant within 5 business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA, which shall take all actions necessary to carry out the decision or refrain from any actions prohibited by the decision.

(1) The decision shall include a notice to the occupant that he/she must vacate the premises within 3 days of receipt of the written notice or on the termination date stated in the original notice of termination, as required in paragraph (m)(2)(i) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(2) If the occupant is required to give a specific number of days' notice which exceeds the number of days in the termination notice, the Regional Director may approve the payment of rent for this period of time if requested by the occupant.

(n) *Disposition of temporary housing units—(1) Acquisition.* The Associate Director may purchase mobile homes or other manufactured housing units for those who require temporary housing. After such temporary housing is vacated, it shall be returned to one of the FEMA-operated Strategic Storage Centers for refurbishment and storage until needed in a subsequent major disaster or emergency. When returning the unit to a Strategic Storage Center is not feasible or cost effective, the Associate Director may prescribe a different method of disposition in accordance with applicable Federal statutes and regulations.

(2) *Sales.* (i) *Eligibility.* When adequate alternate housing is not available, the Regional Director shall make available for sale directly to a temporary housing occupant(s) any mobile home or manufactured housing unit acquired by purchase, in accordance with the following:

(A) The unit is to be used as a primary residence;

(B) The purchaser has a site that complies with local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR Part 9 (in particular § 9.13(e)); and

(C) The purchaser has sufficient funds to purchase and, if necessary, relocate the unit. The Associate Director may approve the sale of a mobile home or manufactured housing unit to a temporary housing occupant when adequate alternate housing is available but only when such sales are clearly in the best interest of the Government.

(ii) *Sales price.* Units shall be sold at prices that are fair and equitable to the purchaser and to the Government, as determined by the Associate Director. The purchaser shall pay the total sales price at the time of sale.

(iii) Adjustment to the sales price.

(A) Adjustments to the sales price may be provided only when both of the following conditions are met:

(1) There is a need to purchase the unit for use as the purchaser's primary residence because other adequate alternate housing is unavailable. Adequate alternate housing must meet the criteria in paragraph (c)(1) of this section, and may consist of:

(i) Existing housing;

(ii) Additional resources such as disaster-damaged rental accommodations which can reasonably

be expected to be repaired and become available in the near future;

(*iii*) New housing construction or housing to be made available through Government subsidy which is included in the immediate recovery plans for the area; and

(*iv*) Residences which can be repaired by the predisaster owner/occupant through funds available from insurance, other disaster assistance programs, or through their own resources.

(*2*) In addition to his/her resources, the purchaser cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

(B) To determine the adjusted sales price, the current available financial resources of the purchaser shall be calculated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the purchaser's financial resources are less than the basic sales price, the sales price shall be adjusted to take into consideration the financial resources available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Associate Director.

(C) The Regional Director must approve all adjustments to the sales price of a mobile home.

(iv) Other conditions of sale.

(A) A unit shall be sold "as is, where is" except for repairs necessary to protect health or safety, which are to be completed prior to sale. There shall be no implied warranties. In addition, the purchaser must be informed that he/she may have to bring the unit up to codes and standards which are applicable at the proposed site.

(B) In accordance with the Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, the sale of a unit for the purpose of meeting the permanent housing need of an individual or family may not be approved where the unit would be placed in a designated special flood hazard area which has been identified by the Director for at least 1 year as floodprone unless the community in which the unit is to be located after the sale is, at the time of approval, participating in the National Flood Insurance Program. The purchaser must agree to buy and maintain an adequate flood insurance policy for as long as the unit is occupied by the purchaser. An adequate policy for purposes of this paragraph shall mean one which provides coverage for the basic sales price of the unit. The purchaser must provide proof of purchase of the initial flood insurance policy.

(3) *Transfer.* The Associate Director may lend temporary housing units purchased under section 408(a) of the Act directly to States, other Governmental entities, or voluntary organizations. Such transfers may be made only in connection with a Presidential declaration of a major disaster or emergency. Donations may be made only when it is in the best interest of the Government, such as when future re-use by the Federal Government would not be economically feasible. As a condition of such transfers, the Associate Director shall require that the recipient:

(i) Utilize the units for the purpose of providing temporary housing for victims of major disasters or emergencies in accordance with the written agreement; and

(ii) Comply with the current applicable FEMA policies and regulations, including this section; 44 CFR Part 9 (especially §§ 9.13 and 9.14), Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Considerations. The Associate Director may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer.

(o) *Reports.* The Associate Director, Regional Director, or Federal Coordinating Officer may require from field operations such reports, plans, and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(p) *Federal responsibility.* The Federal financial and operational responsibility for the Temporary Housing Assistance program shall not exceed 18 months from the date of the declaration of the major disaster or emergency. This period may be extended in writing by the Associate Director, based on a determination that an extension is necessary and in the public interest. The Regional Director may authorize continued use on a non-reimbursable basis of Government property, office space, and equipment by a State, other Government entity, or voluntary organization after the 18 month period.

(q) *Applicant notification.* (1) General. All applicants for temporary housing assistance will be notified regarding the type and amount of assistance for which they are qualified. Whenever practicable, such notification will be provided within 7 days of their application and will be in writing.

(2) Eligible applicants for temporary housing assistance will be provided information regarding:

(i) All forms of housing assistance available;

(ii) The criteria which must be met to qualify for each type of assistance;

(iii) Any limitations which apply to each type of assistance; and

(iv) The address and telephone number of offices responsible for responding to appeals and requests for changes in the type or amount of assistance provided.

(r) *Location.* In providing temporary housing assistance, consideration will be given to the location of:

(1) The eligible applicants' home and place of business;

(2) Schools which the eligible applicant or members of the household attend; and

(3) Agricultural activities which provide 25 percent or more of the eligible applicants' annual income.

(s) *Nonfederal administration of temporary housing assistance.* A State may request authority to administer all or part of the temporary housing assistance program in the Governor's request for a declaration or in a subsequent written request to the Regional Director from the Governor or his/her authorized representative. The Associate Director shall approve such a request based on the Regional Director's recommendation and based on a finding that State administration is both in the interest of the Federal Government and those needing temporary housing assistance. The State must have an approved plan prior to the incident and an approved operational annex within 3 days of the declaration in order to administer the program. When administering the program the State must comply with FEMA program regulations and policies.

(1) *State temporary housing assistance plan.* (i) States which have an interest in administering the Temporary Housing Assistance program shall be required to develop a plan that includes, at a minimum, the items listed below:

(A) Assignment of temporary housing assistance responsibilities to State and/or local officials and agencies;

(B) A description of the program, its functions, goals and objectives of the program, and proposed organization and staffing plan;

(C) Procedures for:

(*1*) Accepting applications at Disaster Application Centers and subsequently at a State established disaster housing office;

(*2*) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(*3*) Preventing duplication of benefits between temporary housing assistance

and assistance from other means, as well as a recoupment procedure when duplication occurs;

(4) Providing the various types of assistance (home repairs, existing rental resources, transient accommodations, and mobile homes);

(5) Providing furniture assistance;

(6) Recertifying occupants for continued assistance;

(7) Terminating assistance;

(8) Contracting for services and/or supplies;

(9) Quality control;

(10) Maintaining a management information system;

(11) Financial management;

(12) Public information;

(13) Processing appeals; and

(14) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or designee shall submit the plan to the Regional Director for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Director.

(2) *Operational annex.* Prior to the State administering the program, the state must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Director within 3 days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the major disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and processing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviations from the approved plan. The Regional Director may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Associate Director based on an evaluation of the capabilities and commitment of the entity by the Regional Director. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Director prior to the incident, and the specific operational annex which has been approved in accordance with paragraph (s)(2) of this section.

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the tasks to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. The State shall maintain adequate documentation according to the requirements of 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, to enable analysis of the program. Final reimbursement to the State, or final debt collection, shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments. Examples of program costs allowable under the Temporary Housing Assistance program include home repairs, costs associated with rental payments, reimbursements for temporary housing including transient accommodations and commercial site rental, mobile home installation and maintenance, mobile home private site development, cost of supplemental assistance, mortgage and rental payments, other necessary costs, when approved by the Associate Director. All contracts require the review and approval of the Regional Director prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Director shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Director shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Director shall make available for use in State or locally administered temporary housing programs Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program reviews and audits.* The State shall conduct program review of each operation. All operations are subject to Federal audit.

(Approved by the Office of Management and Budget under OMB Control Numbers 3067–0009 and 3067–0043)

§§ 206.102 through 206.130 [Reserved]

Subpart E—Individual and Family Grant Programs

§ 206.131 Individual and Family Grant Programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 5 percent of the Federal grant (see paragraph (g) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than $10,000 including both the Federal and State shares. The $10,000 limit will be adjusted annually, at the beginning of each fiscal year, to reflect changes in the Consumer Price Index for all Urban Consumers. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants in instances

where the applicant has not received other benefits to which he/she may be entitled by the time of application to the IFG program, and if the applicant agrees to repay all duplicated assistance to the State. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by the Federal Government, in that IFG assistance is intended to address only disaster-related needs.

(c) *Definitions used in this section.* (1) "Necessary expense" means the cost of a serious need.

(2) "Serious need" means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) "Family" means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) "Individual" means anyone who is not a member of a family as described above.

(5) "Dependent" means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) "Expendable items" means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) "Assistance from other means" means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) "Owner-occupied" means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney General approved set of conditions describing adequate proof of ownership.

(9) "Flowage easement" means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria:

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals and families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i) of this section).

(iii) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, imposes certain restriction on approval of Federal financial assistance for acquisition and construction purposes. This paragraph states those requirements for the IFG program.

(A) For the purpose of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR Part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least 1 year as floodprone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the 6-month period following the major disaster declaration, the Governor's Authorized Representative (GAR) may request a time extension (see paragraph (j)(1)(ii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C) (*1*) The State may not make a grant for acquisition or construction purposes in a designated special flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least 3 years, is deemed to have satisfied this requirement. This provision need be applied only during the 3-year period prior to a new disaster declaration. Adequate flood insurance, for IFG purposes, means a policy which will cover at least the amount of the grant award. If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction on insurable real estate and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for the remainder of the 3-year period, up to the amount which should have been insured by flood insurance. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.

(*2*) After a determination that flood insurance is required and after

disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance.

(D) A State may not make a grant for acquisition or construction purposes where an applicant who is required to apply to the SBA or Farmers Home Administration in accordance with paragraph (d)(1)(i)(A) of this section is denied loan assistance because of failure to have obtained and/or maintained a flood insurance policy required as a condition of previous loan assistance.

(E) A State may not make a grant for acquisition or construction purposes when the applicant is deemed to have assumed the risk knowingly, that is, when property is located within a flowage easement, or in an area between a river and a levee (where the family built the home after the levee was built, or was compensated for future flood damage at the time the levee was built), or when a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damages. This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decisionmaking process before a grant may be made, and also specifies the steps to follow in the decisionmaking process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Director to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time of the disaster, grants may be authorized to:

(A) Repair, replace, or rebuild;

(B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charge involved) or if joint ownership of the access is agreed to;

(C) Clean or make sanitary;

(D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and

(F) Minimization measures required by owner-occupants to comply with the provision of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means, and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property. Proof of ownership of personal property is not required. This category includes:

(A) Clothing;

(B) Household items, furnishings, or appliances. If a predisaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the predisaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;

(C) Tools, specialized or protective clothing, and equipment which are required by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirement of this section.

(vii) Costs for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its findings of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Director and request guidance. The Associate Director also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those required to comply with paragraph (d)(2)(i)(F) of this section;

(iii) Landscaping;

(iv) Real or personal property used exclusively for recreation; and

(v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Director shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applicants or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and "other" categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verification performed by SBA staff on housing and personal

property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below.

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Participating with FEMA in the registration and acceptance of applications, including late applications, up to the prescribed time limitations;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral, and "other" expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant's request, and at the State's option, reconsidering the State's determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(*1*) The receipt of oral or written evidence from the appellate or representative;

(*2*) A determination on the record; and

(*3*) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Director;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of federally sponsored verification information are not subject to recovery by the State, i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984; and ensuring that appropriate corrective action is taken within 6 months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(M) Reporting to the Regional Director, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 44 CFR Part 11, Claims; the State's own debt collection procedures; and all applicable Federal laws and regulations.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the loaned State share as of the date agreed upon in the FEMA-State Agreement; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Director. The Regional Director shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Director shall request the State to prepare any amendments required to meet current policy guidance. The Regional Director must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in Subpart A of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request of the President for a major disaster declaration or by separate letter to the Regional Director, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Associate Director; and

(6) To maintain close coordination with and provide reports to the Regional Director.

(g) *Funding.* (1) The Regional Director may obligate the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with paragraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Director may then obligate funds for the Federal share for the current disaster.

(2) The Regional Director may increase the State's letter of credit to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amount made available to it by the Regional Director. Advances to the State are governed by 44 CFR 13.21, Payment.

(3) The Regional Director may lend to the State its share in accordance with Subpart A of these regulations.

(4) Payable costs are governed by 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments. Also, the costs must be in accordance with the national eligibility criteria stated in paragraph (d) of this section, and the State's administrative plan, as stated in paragraph (e) of this section. The Federal contribution to this program shall be 75 percent of program costs and shall be made in accordance with 44 CFR 13.25, Matching or Cost-Sharing.

(h) *Final payment.* Final payment to the State for the Federal share of the IFG program plus administrative costs, is governed by 44 CFR l3.21, Payment, and 44 CFR 13.50, Closeout. The voucher is Standard Form 270, Request for Advance or Reimbursement). A separate voucher for the State share will be prepared, to include all disaster programs for which the State is requesting a loan of the nonfederal share. The FEMA Regional Director will analyze the voucher and approve, disapprove, or suspend approval until deficiencies are corrected.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR Part 14, Administration of Grants; Audits of State and Local Governments, which implements OMB Circular A–128 regarding audits. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than 7 days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance), then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursement, and disposition of State level appeals, within 180 days following the declaration date. The Regional Director shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Director within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Director may approve the request for a period not to exceed 90 days. The Associate Director may approve any request for a further extension of the time limitations.

(k) *Appeals*—(1) *Bills for collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Director. Such an appeal shall be made in writing within 60 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the regional Director. Such appeals shall be made in writing within 60 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Associate Director.* The State may further appeal the Regional Director's decisions to the Associate Director. This appeal shall be made in writing within 60 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Associate Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(l) *Exemption from garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt collection.* If the State has been unable to recover funds as stated in paragraph (e)(1)(k) of this section, the Regional Director shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR Part 11, Claims, and 44 CFR 13.52, Collection of Amounts Due.

§§ 206.132 through 206.140 [Reserved]

Subpart F—Other Individual Assistance

§ 206.141 Disaster unemployment assistance.

The authority to implement the disaster unemployment assistance (DUA) program authorized by section 410 of the Stafford Act, and the authority to issue regulations, are currently delegated to the Secretary of Labor.

§§ 206.142 through 206.150 [Reserved]

§ 206.151 Food commodities.

(a) The Associate Director will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out the responsibilities in paragraph (a) of this section, the Associate Director may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 413(b) of the Stafford Act.

§§ 206.152 through 206.160 [Reserved]

§ 206.161 Relocation assistance.

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§§ 206.162 through 206.163 [Reserved]

§ 206.164 Disaster legal services.

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this section, "low-income individuals" means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Director or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Director or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Director or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Director determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Director has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Director deems appropriate.

The Associate Director shall coordinate with appropriate Federal agencies and the appropriate national, state and local bar associations, as necessary, in the implementation of the disaster legal services programs.

(d) In the event it is necessary for FEMA to pay lawyers for the provision of legal services under these regulations, the Regional Director, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Director. At the Regional Director's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with Subpart A of these regulations, Non-discrimination in disaster assistance.

§§ 206.165 through 206.170 [Reserved]

§ 206.171 Crisis counseling assistance and training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 416 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of the Department of Health and Human Services (DHHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who approves or disapproves a request for assistance under section 416 of the Act, and is the final appeal authority.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 416 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency designated by the Governor, prior to and separate from the

regular program application process of crisis counseling assistance.

(7) "Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, DHHS, to monitor a crisis counseling program, provide consultation, technical assistance, and guidance, and be the contact point within the DHHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(10) "Secretary" means the Secretary of DHHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State initiation of the crisis counseling program.* To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling services within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental Federal assistance is required. The factors of the assessment must include those described in paragraphs (f)(2) (ii) and (iii) and (g)(2) (iii) and (iv) of this section.

(e) *Public or private mental health agency programs.* If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area.

(f) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that State resources are insufficient, may provide funds to the State, separate from the application process for regular program funds (described at paragraph (g) of this section).

(1) The application must be submitted to the Regional Director no later than 14 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Regional Director;

(iii) To maintain close coordination with and provide reports to the Regional Director; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under Title II of the Stafford Act.

(2) The application must include:

(i) The geographical areas within the designated disaster area for which services will be provided;

(ii) An estimate of the number of disaster victims requiring assistance;

(iii) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(iv) A description of response activities from the date of the disaster incident to the date of application;

(v) A plan of services to be provided to meet the identified needs; and

(vi) A detailed budget, showing the cost of proposed services separately from the cost of reimbursement for any eligible services provided prior to application.

(3) Reporting requirements. The State shall submit to the Regional Director:

(i) A mid-program report only when a regular program grant application is being prepared and submitted. This report will be included as part of the regular program grant application;

(ii) A final program report, a financial status report, and a final voucher 90 days after the last day of immediate services funding.

(4) Immediate services program funding:

(i) Shall not exceed 60 days following the declaration of the major disaster, except when a regular program grant application has been submitted;

(ii) May continue for up to 30 additional days when a regular program grant application has been submitted;

(iii) May be extended by the Regional Director, upon written request from the State, documenting extenuating circumstances; and

(iv) May reimburse the State for documented, eligible expenses from the date of the occurrence of the event or incurred in anticipation of and immediately preceding the disaster event which results in a declaration.

(v) Any funds granted pursuant to an immediate services program, paragraph (f) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable principles prescribed in 44 CFR Part 13.

(5) Appeals. There are two levels of appeals. If a State submits appeals at both levels, the first appeal must be submitted early enough to allow the latter appeal to be submitted within 60 days following the date of the funding determination on the immediate services program application.

(i) The State may appeal the Regional Director's decision. This appeal must be submitted in writing within 60 days of the date of notification of the application decision, but early enough to allow for further appeal if desired. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted, and after consultation with the Secretary, notify the State, in writing within 15 days of receipt of the appeal, of his/her decision;

(ii) The State may further appeal the Regional Director's decision to the Assistant Associate Director. This

appeal shall be made in writing within 60 days of the date of the Regional Director's notification of the decision on the immediate services application. The appeal must include information justifying a reversal of the decision. The Assistant Associate Director, or other impartial person, shall review the material submitted, and after consultation with the Secretary and Regional Director, notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(g) *Regular program.* (1) The application must be submitted by the Governor or his/her authorized representative to the Assistant Associate Director through the Regional Director, and simultaneously to the Secretary no later than 60 days following the declaration of the major disaster. This application represents the Governor's agreement and/or certification:

(i) That the requirements are beyond the State and local governments' capabilities;

(ii) That the program, if approved, will be implemented according to the plan contained in the application approved by the Assistant Associate Director;

(iii) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(iv) To include mental health disaster planning in the State's emergency plan prepared under Title II of the Stafford Act.

(2) The application must include:

(i) Standard Form 424, Application for Federal Assistance;

(ii) The geographical areas within the designated disaster area for which services will be supplied;

(iii) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(iv) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need;

(v) A plan of services which must include at a minimum:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) A description of the training program for project staff, indicating the number of workers needing such training;

(D) A description of the facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to the project, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(3) Reporting requirements. The State shall submit the following reports to the Regional Director, the Secretary, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary, due 30 days after the end of the reporting period. This is consistent with 44 CFR 13.40, Monitoring and Reporting Program Performance;

(ii) A final program report, to be submitted within 90 days after the end of the program period. This is also consistent with 44 CFR 13.40, Monitoring and Reporting Program Performance;

(iii) An accounting of funds, in accordance with 44 CFR 13.41, Financial Reporting, to be submitted with the final program report; and

(iv) Such additional reports as the Regional Director, Secretary, or SCO may require.

(4) Regular program funding:

(i) Shall not exceed 9 months from the date of the DHHS notice of grant award, except that upon the request of the State to the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances;

(ii) The amount of the regular program grant award will take into consideration the Secretary's estimate of the sum necessary to carry out the grant purpose.

(iii) Any funds granted pursuant to a regular program, paragraph (g) of this section, shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 92.

(5) Appeals. The State may appeal the Assistant Associate Director's decision, in writing, within 60 days of the date of notification of the decision. The appeal must include information justifying a reversal of the decision. The Assistant Associate Director, or other impartial person, in consultation with the Secretary and Regional Director, shall review the material submitted and notify the State, in writing within 15 days of receipt of the appeal, of his/her decision.

(h) *Eligibility guidelines.* (1) For services. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the disaster event and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) For training. (i) The crisis counseling project staff or consultants to the project are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals;

(ii) All Federal, State, and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(i) *Assignment of responsibilities.* (1) The Regional Director shall:

(i) In the case of an immediate services program application, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's application, obligate and advance funds for this purpose, review appeals, make a determination (with assistance from the Secretary), and notify the State;

(ii) In the case of a regular program grant application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Considering the Secretary's recommendation, recommend approval or disapproval of the application for assistance under this section; and forward the Regional Director's and Secretary's recommendations and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and

technical assistance if requested to do so; and

(E) Maintain liaison with the Secretary and look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance, consultation, and guidance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director, and the Assistant Associate Director;

(vi) Make the appeal determination, for regular program grants, involving allowable costs and termination for cause as described in paragraph (j)(2) of this section;

(vii) As part of the project monitoring responsibilities, report to the Regional Director and Assistant Associate Director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary and FEMA; provide special reports, as requested by the Regional Director, FCO, or Assistant Associate Director;

(viii) Require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities;

(ix) Properly account for all Federal funds made available to grantees under this section. Submit to the Assistant Associate Director, within 120 days of completion of a program, a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the reimbursement requirements of this part.

(3) The Assistant Associate Director shall:

(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the DHHS;

(iii) Request that the Secretary designate a Project Officer;

(iv) Maintain liaison with the Secretary and Regional Director; and

(v) Review and make determinations on appeals, except for regular program appeals involving allowable costs and termination for cause as described in paragraph (j)(2) of this section, and notify the State of the decision.

(j) *Grant awards.* (1) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(2) Several other regulations of the DHHS apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—DHHS grant appeals procedures
42 CFR Part 50, Subpart D—PHS grant appeals procedures
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the DHHS (effectuation of Title VI of the Civil Rights Act of 1964)
45 CFR Part 81—Practice and procedure for hearings under Part 80
45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs
45 CFR Part 86—Nondiscrimination on the basis of sex in federally assisted programs
45 CFR Part 91—Nondiscrimination on the basis of age in federally assisted programs
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments.

(k) *Federal audits.* The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, The Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

§§ 206.172 through 206.180 [Reserved]

§ 206.181 Use of gifts and bequests for disaster assistance purposes.

(a) *General.* FEMA sets forth procedures for the use of funds made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provided for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora Brown Fund will not be available to the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Act or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no employees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well being of disaster victims. For example,

services to the elderly, to children, or to handicapped persons, such as transportation, recreational programs, provision of special ramps, or hospital or home visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Act, only in areas designated as eligible for Federal disaster assistance through notice in the Federal Register, and only at the discretion of the Assistant Associate Director, Office of Disaster Assistance Programs, FEMA. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) A disaster victim normally will receive no more than $2,000 from this fund in any one declared disaster unless the Assistant Associate Director determines that a larger amount is in the best interest of the disaster victim and the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Associate Director, based on the Regional Director's recommendation.

(3) The fund may not be used in a way that is inconsistent with other federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Associate Director shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color religion, national origin, sex, age or economic status

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Associate Director, Office of Disaster Assistance Programs, shall be responsible for awarding funds and authorizing disbursement.

(2) The Comptroller of FEMA shall be responsible for fund accountability and, in coordination with the Assistant Associate Director, for liaison with the Department of the Treasury concerning the investment of excess money in the fund pursuant to the provisions contained in section 601 of the Act.

(3) Each FEMA Regional Director may submit requests to the Assistant Associate Director on a disaster victim's behalf by providing documentation describing the needs of the disaster victim, a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Associate Director shall review the facts and make a determination. If the award amount is below $2,000, the Assistant Associate Director may appoint a designee to have approval authority; approval authority of $2,000 or above shall be retained by the Assistant Associate Director. The Assistant Associate Director shall notify the Comptroller of a decision for approval, and the Comptroller shall order a check to be sent to the disaster victim (or jointly to the disaster victim and an assistance organization), through the Regional Director. The Assistant Associate Director shall also notify the Regional Director of the decision, whether for approval or disapproval. The Regional Director shall notify the disaster victim in writing, identify any award as assistance from the Cora Brown Fund, and advise the recipient of appeal procedures.

(4) If the award is to be for a service to a group of disaster victims, the Regional Director shall submit his/her recommendation and supporting documentation to the Assistant Associate Director (or his/her designee if the award is below $2,000), who shall review the information and make a determination. In cases of approval, the Assistant Associate Director shall request the Comptroller to send a check to the intended recipient or provider, as appropriate. The Assistant Associate Director shall notify the Regional Director of the decision. The Regional Director shall notify a representative of the group in writing

(5) The Comptroller shall process requests for checks, shall keep records of disbursements and balances in the account, and shall provide the Assistant Associate Director with quarterly reports.

(e) *Audits.* The Inspector General of FEMA shall audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Associate Director, State and Local Programs and Support, for information, comments and appropriate action. A copy shall be provided to the Comptroller for the same purpose.

§§ 206.182 through 206.190 [Reserved]

§ 206.191 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing section 312 of the Stafford Act, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) *Government policy.* (1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, shall cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies shall establish appropriate agency policies and procedures to prevent duplication of benefits.

(2) Major disaster and emergency assistance provided to individuals and families under the Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, is not considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested programs. Examples of federally funded income assistance or resource-tested programs are the food stamp program and welfare assistance programs.

(c) *FEMA policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance. Assistance under the Act may be provided in instances where the applicant has not received other benefits to which he/she may be entitled by the time of application and if the applicant agrees to repay all duplicated assistance to the agency providing the Federal assistance;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary

recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure uniformity in preventing duplication of benefits, by consulting with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(d) *Guidance to prevent duplication of benefits.* (1) Delivery sequence. FEMA provides the following policy and procedural guidance to ensure uniformity in preventing duplication of benefits.

(i) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be generally followed in the delivery of assistance.

(ii) When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

(i) Volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

(ii) Temporary housing assistance (to include provision of a housing unit and minimal repairs);

(iii) Small Business Administration and Farmers Home Administration disaster loans;

(iv) Individuals and Family Grant program assistance;

(v) Volunteer agencies' "additional assistance" programs, and

(vi) The "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that.

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence, and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (i.e., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, an agency may offer assistance which is the primary responsibility of another agency. There also may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A reopens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either:

(i) Assist Agency B in preventing the duplication of benefits, or

(ii) In the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(e) *Program guidance.* (1) Programs under the Act vs. other agency assistance.

(i) In making an eligibility determination, the FEMA Regional Director, in the case of federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available

(2) Programs under the Act vs insurance. In making an eligibility determination, the FEMA Regional Director or State shall

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement The applicant must provide information concerning insurance recoveries

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way. Where flood insurance is involved, the Regional Director shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) Random sample. Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 312. To determine whether duplication has occurred and established procedures have been followed, the Regional Director shall, within 90 days after the close of the disaster assistance programs application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) Duplication when assistance under the Act is involved. If duplication is discovered, the Regional Director shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Director will take no further action. If the agency was not successful in correcting the duplication, and the Regional Director is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Director is not satisfied that the procedures were followed in an acceptable manner, then the Regional Director shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Director shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Director's discretion)

(5) Duplication when assistance under other authorities is involved. When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Director and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section 312, the Regional Director shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with FEMA's Debt Collection Regulations (44 CFR Part 11, Subpart C).

§§ 206.192 through 206.199 [Reserved]

Subpart G—Public Assistance Project Administration

§ 206.200 General.

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

(b) *Policy.* It is a requirement of the Stafford Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with Federal laws and regulations. The regulation entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 44 CFR Part 13, places certain requirements on the State in its role as grantee for the public assistance program. The intent of this "common rule" is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays. FEMA expects States to make subgrants with the Act's requirement in mind. Subgrantees should receive the full payment approved by FEMA and the State contribution as provided in the FEMA-State Agreement as soon as practicable after payment is approved. Payment of the State contribution must, of course, be consistent with State laws.

§ 206.201 Definitions.

(a) "Applicant" means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the GAR for assistance under the State's grant.

(b) "Emergency work" means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

(c) "Facility" means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) "Grant" means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) "Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in § 206.202, the State is the grantee.

(f) "Hazard mitigation" means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(g) "Permanent work" means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(h) "Predisaster design" means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the designed capacity.

(i) "Project" (also referred to as "individual project") means all work performed at a single site whether or not described on a single Damage Survey Report (DSR).

(j) "Subgrant" means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(k) "Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

§ 206.202 Application procedures.

(a) *General.* This section describes the policies and procedures for processing grants for Federal disaster assistance to States. For purposes of this regulation the State is the grantee. The State is responsible for processing subgrants to applicants in accordance with 44 CFR Parts 13, 14, and 206, and its own policies and procedures.

(b) *Governor's Authorized Representative (GAR).* The GAR serves as the grant administrator for all funds provided under the Public Assistance grant program. The GAR's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of those documents necessary for grant award.

(c) *Notice of interest (NOI).* The GAR must submit to the RD a completed NOI (FEMA Form 90–49) for each applicant requesting assistance. NOI's must be submitted to the RD within 30 days following designation of the area in which the damage is located.

(d) *Damage Survey Reports (DSR's).* Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90–91), for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. All damage that is not shown to the inspection team shall be reported in writing to the RD by the GAR within 60 days following completion of the initial inspection.

(e) *Grant approval.* Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and approved by the Regional Director (RD). Prior to the obligation of any funds the GAR shall submit a Standard Form (SF) 424, Application for Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSR's. The DSR's approved for an applicant under the State's grant provide the basis for a subgrant by the State to the applying entity.

(f) *Exceptions.* The following are exceptions to the above outlined procedures and time limitations.

(1) *Grant applications.* An Indian tribe or authorized tribal organization may submit an SF 424 directly to the RD when assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations.

(2) *Time limitations.* The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the GAR. Such justification shall be based on extenuating

circumstances beyond the subgrantee's control.

(Approved by the Office of Management and Budget under Control Numbers 3067–0033 and 0348–0043)

§ 206.203 Federal grant assistance.

(a) *General.* This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing.* All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding*— (1) *Large projects.* When the approved estimate of eligible costs for an individual project is $35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such $35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. Final payment of the Federal share of each project will be made following project completion and submission of a final claim by the grantee.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than $35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such $35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section. Final payment of the Federal share of these projects shall be made upon approval of the project.

(d) *Funding options*— (1) *Improved projects.* If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the GAR's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

(2) *Alternate projects.* In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the GAR may request that the RD approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for such alternate projects shall equal 90 percent of the Federal share of the approved estimate of eligible costs.

(iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonfederal share of any project, nor for any operating expense.

(iv) Prior to the start of construction of any alternate project the GAR shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The GAR shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

§ 206.204 Project performance.

(a) *General.* This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds.* Advances of funds will be made in accordance with 44 CFR 13.21, Payment.

(c) *Time limitations for completion of work*— (1) *Deadlines.* The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

COMPLETION DEADLINES

Type of work	Months
Debris clearance	6
Emergency work	6
Permanent work	18

(2) *Exceptions.* (i) The GAR may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the GAR may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the GAR's authority shall be submitted by the GAR to the RD and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The GAR shall be notified of the RD's determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost overruns.* During the execution of approved work the GAR may find that actual project costs are exceeding the approved DSR estimates. Such cost overruns normally fall into the following three categories:

(1) Variations in unit prices;

(2) Change in the scope of eligible work; or

(3) Delays in timely starts or completion of eligible work.

The GAR shall evaluate each cost overrun and, when justified, submit a request and a recommendation to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The RD shall notify the GAR in writing of the final determination.

(f) *Progress reports.* Progress reports will be submitted by the GAR to the RD quarterly. The RD and GAR shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment has not been made and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

§ 206.205 Payment of claims.

(a) *Small projects.* Payment of the Federal share of a small project shall be made to a subgrantee as soon as practicable after project approval by FEMA. Prior to the closeout of the disaster contract, the GAR shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee.

(b) *Large projects.* (1) The GAR shall make a claim to the RD for reimbursement of eligible costs for each approved large project. In submitting such claims the GAR shall certify that reported costs were incurred in the performance of eligible work, that the

approved work was completed and that the project is in compliance with the provisions of the FEMA-State Agreement.

(2) The RD shall determine the eligible amount of reimbursement for each large project and approve payment. If a discrepancy exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted.

§ 206.206 Appeals.

(a) *Governor's Authorized Representative.* The GAR may appeal any determination previously made related to Federal assistance for a subgrantee. The GAR's appeal shall be made in writing and submitted within 60 days after receipt of notice of the action which is being appealed. In a case where a subgrantee finds that when it has completed all of its small projects a significant overrun has occurred related to the total cost for all small projects, the GAR may submit an appeal within 60 days following the latest completion date for any of the small projects.

(b) *Regional Director.* Upon receipt of an appeal, the RD shall review the material submitted and make such additional investigations as deemed appropriate. Within 90 days following receipt of all related information, the RD shall notify the GAR, in writing, as to disposition of the appeal. If the decision is to grant the appeal, the RD will take appropriate implementing action.

(c) *Associate Director.* (1) If the RD denies the appeal, the GAR may submit a second appeal to the Associate Director. Such appeals shall be made in writing, through the RD, and shall be submitted not later than 60 days after receipt of notice of the RD's denial of the first appeal. The Associate Director shall render a determination on the GAR's appeal within 90 days following receipt of all related information. Action by the Associate Director is final.

(2) In rendering such determinations the Associate Director may, in those cases involving appeals of a highly technical nature, refer the appeal to an independent scientific or technical group for review. The GAR must first agree to such a process, including establishment of a new time limitation for appeal resolution, as well as sharing in the cost of such reviews.

(3) The Associate Director will periodically review determinations rendered by the RD to ensure that appeals are being given fair and impartial consideration.

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR Part 13 apply to all disaster assistance grants and subgrants. Uniform audit requirements set forth in 44 CFR Part 14 apply to all grant assistance provided under this subpart.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants on application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR Parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR Part 14;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(2) The GAR may request the RD to provide technical assistance in the preparation of such administrative plan.

(3) The GAR shall submit such administrative plan to the RD for approval within 180 days following publication of these regulations. Thereafter, the GAR shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the GAR to prepare any amendments required to meet current policy guidance.

(4) The GAR shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit.* The grantee and each subgrantee, which receives $25,000 or more in Federal financial assistance, shall have audits made in accordance with 44 CFR Part 14. The GAR is responsible for ensuring that subgrantees perform such audits on a timely basis.

(2) *Federal audit.* FEMA may elect to conduct a Federal audit on the disaster assistance grant or on any of the subgrants.

§ 206.208 Direct Federal assistance.

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible debris removal and/or emergency work, the GAR may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the GAR to the RD and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-way necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the nonfederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in paragraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission

assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, the RD shall prepare a DSR establishing the scope and estimated cost of eligible work. The Federal agency shall not exceed the approved funding limit without the authorization of the RD

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and GAR advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonfederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance GAR shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

§§ 206.209 through 206.219 [Reserved]

Subpart H—Public Assistance Eligibility

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR Part 206, Subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation. Regulations under 44 CFR Part 9—Floodplain Management and 44 CFR Part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

(a) "Educational institution" means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) "Force account" means an applicant's own labor forces and equipment.

(c) "Immediate threat" means the threat of additional damage or destruction from an event which can reasonably be expected to occur within 1 year.

(d) "Improved property" means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facilities providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) "Utility" means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) "Emergency facility" means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(6) "Other essential governmental services facilities" means facilities such as community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public.

(f) "Public entity" means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(g) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(h) "Public facility" means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) "Standards" means codes, specifications or standards for the construction of facilities to include legal requirements for additional features. Such standards may be different for new construction and repair work.

§ 206.222 Applicant Eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) *State and local governments.*

(b) *Private non-profit organizations or institutions* which own or operate a private nonprofit facility as defined in § 205.221(e).

(c) *Indian tribes or authorized tribal organizations* and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the major disaster event,

(2) Be located within a designated disaster area, and

(3) Be the legal responsibility of an eligible applicant.

(b) *Assistance under other Federal agency (OFA) programs.* Disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(c) *Private nonprofit facilities.* To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization (see § 206.221(f)).

(d) *Public entities.* Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(f) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris removal.

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

(1) Eliminate immediate threats to life, public health, and safety; or

(2) Eliminate immediate threats of significant damage to improved public or private property; or

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban, and rural areas, including large lots, clearance of the living, recreational, and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

§ 206.225 Emergency work.

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Director may require certification by local, State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to life, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of damaged facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Standards.* For the costs of federal, State, and local repair or replacement standards which change the predisaster construction of a facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(2) Be appropriate to the predisaster use of the facility;

(3) Be in writing and formally adopted prior to project approval; and

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility.

(b) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Director may authorize or require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(c) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is

feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (c)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(d) *Relocation.* (1) The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions of Title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR Part 9.

(4) When relocation is required by the Regional Director, and the applicant requests approval of an alternate project (see § 206.203(d)(2)), eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding when he/she determines in accordance with 44 CFR Part 9, 44 CFR Part 10, or 44 CFR Part 206, Subpart M, that restoration in the original location is not allowed.

(e) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(f) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible

(g) *Beaches* (1) Replacement of sand on an unimproved natural beach is not eligible

(2) *Improved beaches.* Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(h) *Restrictions*—(1) *Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

§ 206.227 Snow removal assistance.

Snow removal is eligible for the following types of facilities only:

(a) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(b) Tracks and rights of way of urban mass transit systems as necessary for the continuation or resumption of services.

(c) Roads and Streets are defined for purposes of snow removal assistance as:

(1) "Collector roads and streets" means local roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest.

(2) "Minor arterial roads and streets" means roads and streets which serve thru traffic and provide access of higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(3) "Principal arterials" means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property (For further clarification, refer to the functional classifications for highways, as determined pursuant to 23 CFR 470.107(b)(3))

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 44 CFR I3.22. More specific requirements are set forth below.

(a) *Eligible direct costs.* There are exceptions to the policies of 44 CFR 13.22, as follows:

(1) Ownership and operation costs for applicant-owned equipment. Applicants shall be reimbursed their reasonable actual costs for equipment ownership and operation. FEMA has developed a Schedule of Equipment Rates which represents maximum reasonable equipment costs in almost all cases. This Schedule will be the basis for reimbursement in all cases where an applicant does not have established equipment rates. Where an applicant does have established equipment rates, FEMA will base its reimbursement on either the applicant's established rates or the FEMA Schedule, whichever is lower, unless that applicant certifies that its rates do not reflect actual costs. In that event, the applicant will be reimbursed based on the FEMA Schedule, but will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(2) State management costs. (i) Costs of State personnel (regular time salaries only) assigned to administer the Public Assistance program in the Disaster Field Office (DFO) may be eligible when approved by the Regional Director. The State shall submit a plan for the staffing of the DFO within 5 days of the opening of the office. This plan and the plans required in paragraph (a)(8)(ii) of this section shall be in accordance with the administrative plan requirements of § 206.207, Administrative and Audit Requirements, in Subpart G.

(ii) After the close of the DFO, costs of State personnel (regular time salaries only) for continuing management of the Public Assistance grants may be eligible when approved in advance by the Regional Director. The State shall submit a plan for such staffing in advance of the requirement.

(b) *Eligible indirect costs.* Expenses associated with administration of the disaster assistance program are eligible Except for certain costs of the audit of the State grant, and certain State management costs, an allowance as outlined in paragraphs (b)(1) and (2) of this section will cover all other indirect costs which may be incurred by an applicant or the State The Federal share

of the indirect cost allowance shall be 100 percent.

(1) *Subgrantee administrative expenses.* Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 404, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):

(i) For the first $100,000 of net eligible costs, three percent of such costs;

(ii) For the next $900,000, two percent of such costs;

(iii) For the next $4,000,000, one percent of such costs;

(iv) For those costs over $5,000,000, one half percent of such costs.

(2) *Grantee administrative expenses.* Pursuant to section 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of damage survey reports final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of total assistance provided for all subgrantees in the State under sections 403, 404, 406, 407, 502, and 503 of the Act:

(i) For the first $100,000 of total assistance provided, three percent of such costs.

(ii) For the next $900,000, two percent of such costs.

(iii) For the next $4,000,000, one percent of such costs.

(iv) For those costs over $5,000,000, one half percent of such costs.

§§ 206.229 through 206.249 [Reserved]

Subpart I—Public Assistance Insurance Requirements

§206.250 General.

(a) Sections 311 and 406(d) of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93–234, establish insurance requirements as a condition for approving certain disaster assistance under the Act. This subpart pertains to assistance under section 406 of the Act.

(b) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction in special flood hazard areas. This subpart implements Pub. L. 93–234, as it pertains to Public Assistance authorized by the Act.

(c) Actual or anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with § 206.253(b).

(d) The maximum amount of flood insurance recovery which could have been obtained for a building and its contents within the special flood hazard area shall be subtracted from otherwise eligible costs, in accordance with § 206.253(h).

(e) The insurance requirements of this subpart should not be interpreted as a substitute for the various hazard mitigation techniques which may be available to reduce the incidence and severity of future damage.

§ 206.251 Definitions.

(a) "Assistance" means any form of Federal grant under section 406 of the Act to replace, restore, repair, reconstruct, or construct any facility and/or its contents as the result of a major disaster.

(b) "Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

(c) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation.

(d) "Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native Village or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(e) "National Flood Insurance Program" (NFIP) means the program authorized by 42 U.S.C. 4001–4128.

(f) "Special flood hazard area" means an area having special flood, mudslide, and/or flood-related erosion hazards, as shown on the hazard identification maps published by the NFIP. "Special flood hazard area" is synonymous with "special hazard area," as defined in Subchapter B—Insurance and Hazard Mitigation.

(g) "Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations, known as a Write Your Own company.

§ 206.252 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 311 of the Act and by this subpart:

(a) Assistance otherwise eligible under section 406 of the Act for any State-owned facility that is covered by an adequate State plan of self-insurance approved by the Associate Director, or in the case of such a plan for flooding, by the Director.

(b) Assistance under section 406 of the Act for any facility for which insurance is not reasonably available, adequate, and necessary. This may include facilities which, by virtue of approved hazard mitigation measures, have been, or will be removed from the base flood plain.

(c) Any grant for which the approved DSR estimate is less than $10,000.

§ 206.253 Applicability.

(a) *General insurance requirements.* (1) The requirements of this subpart shall apply to all assistance pursuant to section 406 of the Act with respect to any major disaster declared by the President after November 23, 1988, unless excluded under § 206.252.

(2) Prior to approval of a Federal grant for the restoration of a facility and its contents, the GAR shall notify the Regional Director of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Director shall reduce the eligible costs by the actual amount of insurance proceeds, with the exception of flood insurance, the reduction for which is described in § 206.253(b)(2). In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the insurance policy.

(3) The Regional Director may not approve any assistance unless the GAR has provided acceptable assurances to the effect that the applicant will, at a minimum, obtain and maintain insurance for the approved DSR estimate of damages to the facility and its contents.

(4) No assistance under section 406 of the Act shall be provided for any facility for which assistance was previously received unless the insurance was obtained and maintained as required under section 311 of the Act and these regulations.

(5) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 406 of the Act. Private nonprofit organizations shall

submit the necessary documentation and assurances required by this subpart through the GAR.

(6) When a State has been approved by the Director as a self-insurer prior to the declaration of a major disaster, the Regional Director shall determine the amount of self-insurance applicable to any damaged facility and shall deduct it from the grant. In the case of an approved self-insurance plan for flooding, the deduction shall be based on the proceeds which would have been payable had the facility been fully covered by a standard flood insurance policy.

(b) *Additional flood insurance requirements.* (1) The Regional Director shall require flood insurance for flooding major disasters, when it is reasonably available, adequate, and necessary under section 311 of the Act, even though the flood damaged building may be located outside the base floodplain.

(2) Where a building damaged by flooding is located in a special flood hazard area identified for more than 1 year by the Director, assistance pursuant to section 406 of the Act shall be reduced. The amount of the reduction shall be the value of the building immediately prior to the damage, or the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy, whichever is less. The reduction shall not apply to a private nonprofit facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of paragraph (b)(3) of this section will prevent approval of any assistance for the private nonprofit facility unless the community joins the NFIP, and the required flood insurance is purchased. The effective date of this paragraph is May 22, 1989.

(3) FEMA shall not approve any financial assistance for acquisition or construction in a special flood hazard area unless the community is participating in the NFIP at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. A facility may become eligible for financial assistance, subject to the reduction provision of § 206.253(b)(2), if the community qualifies for and enters the NFIP within 6 months of the Presidential declaration.

§ 206.254 Type, extent, and duration of insurance.

(a) Assurances under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a certification by the State Insurance Commissioner in response to a written request.

(c) The GAR shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured facility, whichever is the lesser.

§ 206.255 Self-insurance.

(a) A State may elect to act as a self-insurer for general hazards with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under section 406 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with section 311 of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any facility or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such facility or part thereof would have been reasonably available.

(b) The procedures and requirements for a state to qualify as a self-insurer for flooding are different from those for general hazards self-insurance. The requirements for flood hazards self-insurance are described in Subchapter B, Insurance and Hazard Mitigation. Financial assistance for a state with an approved self-insurance plan for flooding shall be reduced in accordance with § 206.253(b)(2).

§§ 206.256 through 206.339 [Reserved]

Subpart J—Coastal Barrier Resources Act

§ 206.340 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 206 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alterative route is reasonably available.

(c) "Existing facility" on a unit of CBRS established by Pub. L. 97-348 means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date of such amendment is

substituted for October 18, 1982, in this definition.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" on a unit of the CBRS established by Pub. L. 97–348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97–348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

(h) "Start of construction" for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities" as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of. these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Disaster Legal services; and

(4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal expenditures.

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, 502 and 503 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;

(2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);

(3) Repair of air and water navigation aids and devices, and of the access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of the Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Rate Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and § 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in § 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(3) *Energy facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished;

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems;

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall with the categories identified in paragraphs (c) (1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c) (1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) *Improved project.* An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) *Alternate project.* A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets and the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRS. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risk of damage to the facility being repaired or replaced;

(3) Risk of damage to other facilities;

(4) Risk of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350 through 206.359 [Reserved]

Subpart K—Community Disaster Loans

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent. The interest rate used shall be the Treasury rate for 5 year maturities in effect for the month the Promissory Note is executed by the Associate Director.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster

occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extension of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonfederal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a major disaster, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there is sufficient funds to meet current fiscal year operating requirement;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State

and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 206.364 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its Annual Operating Budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) Operating Budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) Promissory note. (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be cosigned by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the note.

(ii) If the State cannot legally cosign the promissory note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067–0034)

§ 206.365 Loan Administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to

account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster is reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures not disaster related, except increase due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93–234, as amended, and other hazard insurance required under section 311, Pub L. 93–288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes.

(i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars),

(B) The assessment ratio (percent),

(C) The assessed valuation (dollars),

(D) The tax levy rate (mils),

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) Narrative justification. The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.367.

(4) Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approved by the Office of Management and Budget under Control Number 3067-0026)

§ 206.367 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I=P\times R\times T$, where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368 through 206.389 [Reserved]

Subpart L—Fire Suppression Assistance

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State agreements.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Numbers 3067–0066)

§ 206.393 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost eligibility.

(a) *Cost principles.* See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments.

(b) *Program specific eligible costs.* (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.

(4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) *Program specific ineligible costs.* (l) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR Part 151).

§ 206.395 Grant administration.

(a) Project administration shall be in accordance with 44 CFR Part 13, and applicable portions of Subpart G, 44 CFR Part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR Part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98–502. (See Subpart G of this part.)

(d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396 through 206.399 [Reserved]

Subpart M—Hazard Mitigation Planning

§ 206.400 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the actions and procedures for implementing section 409 of the Stafford Act. Any conflicting provisions elsewhere in 44 CFR Part 206 are superseded by this subpart. It is also the purpose of this subpart to clarify the responsibilities for hazard mitigation of the various Federal agencies and State and local governments as the result of a major disaster or emergency declared by the President.

(b) *Applicability.* This subpart covers actions, procedures, standards, and criteria for accomplishing optimum results in reduction, avoidance and mitigation of all types of future disasters. These regulations are intended for the use of federal, State and local governments, as well as organizations and individuals administering or receiving Federal grant or local assistance as the result of a major disaster or emergency. They are also intended to complement and reinforce implementation in other subparts of these regulations:

(1) The President's executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands; and

(2) The National Environmental Policy Act of 1969 Pub. L. 91–190. When a major disaster or emergency occurs, the hazard mitigation actions to cope with those hazards identified as the result of the major disaster or emergency shall receive priority.

§ 206.401 Definitions.

In this subpart reference is frequently made to such words as hazard reduction, avoidance, and mitigation; land use and construction regulations; and disaster proofing. As used in this subpart:

(a) "Avoidance" means to eliminate a hazard through measures such as relocation or prohibition of construction within an area susceptible to risk or danger, or by other means.

(b) "Construction practices" means codes, standards, and specifications applicable to repairs, or to alterations or new construction of a facility or structure.

(c) "Disaster proofing" means those minimum alterations or modifications to damaged facilities that could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility, or to make it disaster resistant.

(d) "Hazard" means any natural source of danger or element of risk identified following a major disaster or emergency.

(e) "Land use regulations" include zoning for purposes compatible with prudent floodplain management and

both preventive and corrective restrictions on construction, repairs, or alterations of facilities within specified areas. Preventive restrictions provide regulation of new land use, i.e., nonstructural disaster control measures such as use of high hazard areas for parks, farms, and recreational areas. Corrective restrictions include:

(1) Floodproofing;

(2) Acquisition;

(3) Insurance;

(4) Removal of non-conforming uses.

(f) "Mitigation" means to alleviate by softening and making less severe the effects of a major disaster or emergency and of future disasters in the affected areas, including reduction or avoidance.

(g) "Reduction" means to diminish in strength and intensity or to restrict or lessen the size, amount and extent of damage resulting from the major disaster or emergency or to be expected as the result of future disasters.

§ 206.402 Policy.

(a) The FEMA role under section 409 of the Act is one of providing leadership, not through mandates, but through governments and assistance to them in their initiatives to develop and maintain effective mitigation standards. FEMA must provide realistic and attainable mitigation options for their consideration and adoption. Ultimately, improved programs can only be developed when each party understands the benefits to be gained through hazard mitigation and is willing to work in a shared environment of cooperation and commitment.

(b) While the need to respond quickly to disaster and life-threatening condition must remain paramount, FEMA shall assure that the ultimate benefits to be gained through effective hazard mitigation programs are not diminished and remain a primary objective.

(c) FEMA shall provide technical advice and assistance for hazard mitigation to local or State governments and to certain private nonprofit organizations eligible for grant assistance under section 406 of the Stafford Act. Such technical advice and assistance shall be supplementary to that available from any other State or Federal agencies under their existing programs. Technical advice may also be provided for water conservation measures in affected areas short of water as the result of the major disaster or emergency.

(d) FEMA shall encourage local or State governments to adopt safe land-use regulations and construction practices or standards. When such action is taken, after the declaration of a major disaster or emergency, the Associate Director may approve such regulations, practices or standards as applicable deviations as a condition for any Federal grants under section 406 of the Stafford Act. When such action is not taken, the Associate Director may still prescribe appropriate standards as applicable to federally-assisted projects resulting from the major disaster or emergency being restored under section 406 of the Act. The Associate Director may also prescribe such standards for prospective applicability to all similar repairs or new construction of facilities within the applicant's jurisdiction. In such instances, the applicant shall be notified in writing by the Regional Director through the State of these prescribed standards and that any future damages or destruction of facilities due to failure to comply with such prescribed standards would not be eligible for FEMA grant assistance under section 406, except under unusual circumstances when approved in the public interest by the Associate Director.

(e) Local governments usually have the decision-making responsibility within their jurisdictions for hazard mitigation measures, including sound land-use regulations and safe construction practices. The State has the central role in resource management and in hazard mitigation throughout the State. Federal technical advice and assistance is supplementary in nature.

(f) FEMA recognizes the heavy administrative workloads of local and State governments in coping with major disasters or emergencies and, in initiating any hazard mitigation programs, it will be sensitive to these existing workloads. In developing any proposed implementation plan and procedures, FEMA emphasis is to focus the efforts of all participants on achieving positive results in hazard mitigation. It encourages initiative by State and local governments within the context of their laws, regulations, and customs.

(g) For all major disasters and emergencies involving actions or affecting in floodplains or wetlands appropriate hazard mitigation measures shall be taken as required by FEMA's Floodplain Management regulations (44 CFR Part 9).

(h) Nonstructural disaster protection methods or measures shall be fully considered and emphasized where consistent with primary program purposes of the Act.

(i) As a condition for any grant for federally assisted projects under section 406 of the Act, the Associate Director has prescribed as a standard, floodproofing measures which the Regional Director determines are appropriate and practicable as disaster-proofing under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain.

(j) During hazard mitigation actions involving water resources under the subpart, the State shall be the focal point for water resource management.

(k) As a condition for any grant or loan under the Act for municipal water supply or waste water treatment facilities or systems, appropriate water conservation requirements shall be included and any disincentives to water conservation shall be removed.

§ 206.403 Responsibilities.

(a) *General.* After a declaration of a major disaster or emergency coordinated effort of all participants is required to identify the significant hazards and appropriate mitigation measures to cope with those hazards.

(b) *FEMA.* The Regional Director shall include appropriate provisions for hazard mitigation under this subpart in the FEMA-State Agreement. He/she shall coordinate with the Governor's Authorized Representative to provide for a joint Federal/State team to survey the disaster affected area soon after a major disaster or emergency declaration for these purposes:

(1) Identify significant hazards in the affected area, giving priority to disaster-related hazards;

(2) Evaluate the impacts of these hazards and measures which will mitigate these impacts; and

(3) Recommend appropriate hazard mitigation measures.

The Regional Director shall designate a FEMA staff member to serve as Hazard Mitigation Coordinator (HMC) on the FEMA/State survey team and to confer with local, State and Federal officials concerning these hazards and hazard mitigation measures. Based on these consultations by the FEMA HMC and the Regional Director, and on decisions by local or State agencies which may establish new or modified land use regulations or standards, the Regional Director may recommend that the Associate Director approve or prescribe appropriate standards. The Regional Director shall also designate a FEMA planner to serve on the FEMA/State planning teams. Concurrently with the FEMA/State survey team activities, the FEMA planner shall coordinate with the State planner designated by the Governor's Authorized Representative in working with participating Federal, State and local agencies, organizations or individuals in accomplishing hazard

mitigation planning as required by the Regional Director in accordance with 44 CFR 206.403(e), 206.405, 206.410(b), and 206.411(c). The Regional Director may provide technical advice and assistance to local or State agencies for the purpose of accomplishing hazard mitigation activities under this subpart. He/she shall review State evidence of compliance with approved hazard mitigation activities and shall provide to the Associate Director an after-action report when all such hazard mitigation activities are completed or terminated. Because the Regional Director requires that each applicant take appropriate hazard mitigation measures as a condition for approval of a FEMA grant or loan, he/she shall follow up with the State to recover Federal funding whenever an applicant fails to satisfy any conditions upon which the approval of the grant was based. The Regional Director may arrange for other Federal agencies to participate in hazard mitigation activities under this subpart.

(c) *State.* The Governor's Authorized Representative is responsible for State performance of hazard mitigation activities under the FEMA-State Agreement and this subpart. He/she shall designate a State Hazard Mitigation Coordinator (HMC) to serve on the FEMA/State survey team and a State planner to serve on the FEMA/State hazard mitigation planning team. The Governor's Authorized Representative shall arrange for State and local participation in FEMA/State surveys and FEMA/State planning in the affected areas of the State for purposes stated above. The State HMC shall arrange for consultations on the findings and recommendations from the joint survey and shall follow up to assure that timely and adequate local and State hazard mitigation actions are taken. Whenever appropriate, he/she shall arrange for State funding or technical assistance to eligible applicants for the purposes of accomplishing State-approved hazard mitigation actions. He/she shall arrange for State inspection or audit to verify compliance with approved hazard mitigation measures. When these activities are completed in accordance with the FEMA-State Agreement, he/she shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance. Similarly, the State planner shall work with the FEMA planner in accomplishing the tasks referenced in paragraph (b) of this section.

(d) *Local.* The applicant is responsible for local performance of hazard mitigation measures under the FEMA-State Agreement and this subpart. Each applicant shall designate a local Hazard Mitigation Coordinator (HMC) to work with the FEMA/State survey team as required by the State HMC. Working with the FEMA/State survey team, the local HMC will assess the damage within the local jurisdiction. The local HMC shall arrange for local participation in consultations with FEMA/State survey teams about hazard mitigation actions under this subpart. The local HMC is responsible for informing local officials and interested citizens about significant survey teams activities. He/she shall also collect any local comments on these matters and report them to the State HMC. With any project application, each applicant shall submit adequate assurances that any required hazard mitigation measures have been taken or will be completed. The applicant, to the extent of its legal authority, is responsible for implementing and enforcing land use regulations and safe construction practices which are conditions agreed upon for FEMA grants or loans. The applicant shall provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative. The applicant's local Authorized Representative shall arrange for the applicant's planner to work with the FEMA/State planning team in reviewing and updated existing hazard mitigation plans, or in developing new hazard mitigation plans as may be scheduled by the Governor's Authorized Representative and requested by the Regional Director.

(e) *FEMA-State Agreement.* When necessary to clarify responsibilities under this subpart for a major disaster and emergency, clarification shall be provided by amendment to the FEMA-State Agreement. The following is a typical paragraph:

Hazard Mitigation Clause Added to the Federal-State Agreement

"The State agrees that, as a condition for any Federal loan or grant, the State or the applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees: (1) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; (2) to prepare and submit not later than 180 days after the declaration to the Regional Director for concurrence, hazard mitigation plan or plans for the designated areas, and (3) to review and update as necessary disaster mitigation portions of the emergency plans."

"The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions."

§ 206.404 Surveys.

(a) *Damage assessments.* Prior to a declaration of a major disaster or emergency, local State and Federal preliminary assessments of damage may identify major hazards and opportunities for hazard mitigation actions. This information will be transmitted to the FEMA/State survey team as indicated below. During the period immediately following a major disaster or emergency, each applicant is expected to use its resources and capabilities as necessary to perform emergency work, such as debris removal or emergency measures to save lives, or to protect public health and safety or to protect property. The identification of hazards by the damage assessment team and the performance of the emergency work may result in significant hazard mitigation. Damage Survey Reports (DSR) completed by Federal inspectors will also include identification of hazards and recommendations of mitigation measures to be incorporated in the repair work.

(b) *Survey activities.* After a declaration of a major disaster or emergency, the Governor's Authorized Representative shall schedule a briefing for State staff members about their participation in FEMA/State survey team activities. The survey team shall be made up of the FEMA HMC and the State HMC, plus other Federal or State staff members or consultants. This FEMA/State survey team shall work with the appropriate local HMC. Utilizing the information from the preliminary damage assessments, the DSR's referred to above, and all other pertinent information readily available, the survey team shall visit the sites of significant damage to evaluate the hazards. This evaluation may include investigation of selected individual damaged facilities plus review of applicable land use regulations, construction standards, and other appropriate hazard mitigation measures. The federal/State survey team shall work with the local HMC and other local officials as necessary during this evaluation. The FEMA HMC shall supply model regulations, suggested standards, and other pertinent references for use by the survey team. For each identified significant hazard the survey team shall include appropriate recommendations of hazard

mitigation measures in its final report (see 44 CFR 206.411(c)).

§ 206.405 Hazard mitigation plans.

(a) *Plans.* For each hazard-prone area, the FEMA/State planning team shall review and evaluate existing local or State emergency plans for hazard mitigation. Particular attention shall be given to the adequacy of plans for warning and evacuation. In those cases where no such plans exist, this planning team shall report its findings and recommendations concerning specific needs to develop and maintain such plans. The Regional Director shall require the State to update existing State or local plans or to develop such new hazard mitigation plans as he/she deems necessary in consultation with the Governor's Authorized Representative. In determining whether to impose such a requirement on a local government, consideration shall be given to the opportunities presented for effective hazard mitigation, the size and composition of the local government, the local government's authority to regulate land use and to require safe construction practices, and the local government's exercise of such authority. The Governor's Authorized Representative, or Regional Director, may provide technical advice and assistance to State agencies or local governments in developing new plans or updating existing plans to mitigate hazards identified as the result of the major disaster or emergency within the affected areas.

(b) *Objectives.* The identification of hazards following a major disaster or emergency and accomplishment of appropriate hazard mitigation measures are the short-term planning objectives to be required by the FEMA-State Agreement. The Regional Director and the Governor's Authorized Representative shall focus with highest priority on these objectives in verifying compliance with the Agreement as a condition for Federal loans or grants.

(c) *Mapping.* The FEMA/State planning team shall verify the impact of the major disaster on disaster frequencies computed prior to the major disaster through contacts with agencies maintaining such records. This planning team shall also consider the advisability of redefining boundaries of high-hazard areas as the result of their findings and shall make recommendations to the Regional Director on any needs for new mapping of high hazard areas.

(d) *Schedules.* In its recommendations of appropriate hazard mitigation measures, the planning team shall suggest target dates and schedules for accomplishment of each recommended measure.

(e) *Measures as conditions for FEMA assistance.* Measures which relate only to specific construction projects shall be specified as conditions for approval of applicable FEMA grants or loans. Those hazard mitigation measures which require other actions by applicants for FEMA grants of loans shall be reported by the FEMA/State survey team to the Governor's Authorized Representative, for referral to the FEMA/State planning team or other appropriate action.

§ 206.406 Hazard mitigation measures.

(a) *General.* Certain types of actions may be taken to achieve hazard mitigation including:

(1) Avoidance,

(2) Reduction, and

(3) Adoption and enforcement of land use regulations and of safe construction practices.

(b) *Avoidance.* For siting new construction of facilities or structures, location outside of high hazard areas is the preferred solution. For each hazard identified following a major disaster or emergency, the survey team shall assess the feasibility of avoidance of high hazard areas in cases where new construction, alteration, or major repairs are involved in restoration of damaged or destroyed facilities. The survey team shall also make specific recommendations concerning land use regulations and rezoning to achieve the objectives of avoidance whenever appropriate.

(c) *Reduction.* Reduction of the effects of hazards on facilities and people may be achieved by reducing the area or level of the hazard itself or by reducing the impact of the hazard on individual facilities. Examples of the first are flood control projects such as dams, levees, floodwalls or channel improvements. In some situations, these may be the only practicable measures to protect facilities or structures already located in the floodplain. Reducing the impact on a facility may be accomplished by such measures as installing shearwalls or bracing in buildings or installing check valves in utility lines in earthquake-prone areas. In flood-prone areas, tie downs may be used for mobile homes, lower levels of building may be waterproofed, water damage resistant materials may be used in reconstruction, or such lower levels may be restricted to nonhazardous uses.

§ 205.407 Land use regulations.

(a) *Local zoning.* Regulation of land use within its jurisdiction is normally a function of local government. In some cases, the local government may have already adopted land use regulations or zoning prior to a major disaster or emergency. Modification or updating based on current maps and model regulations may be necessary. Some re-mapping may frequently be required. In certain cases, the existing land use regulation may be adequate to cope with the identified hazards, if properly enforced. State, federal, or private interests may propose model zoning regulations, but adoption and enforcement of such regulations remain with the responsible State or local government. Certain State or Federal restrictions may be locally adopted and enforced by mutual agreement, or as a condition for certain types of financial assistance. The survey team shall make its recommendation based on field observations and evaluation of hazards within the affected areas. Consultations with the applicant, the State HMC, and the FEMA HMC may then be necessary to identify the applicant's options for decision making. The State or FEMA HMC shall provide encouragement, technical advice, and assistance to the applicant to adopt and enforce appropriate land use regulations. The FEMA/State planning team shall follow up on contacts with the State or local government if appropriate.

(b) *State land use regulations.* For State-owned properties outside of local jurisdiction, the responsible State agency adopts and enforces land use regulations. In some cases, these State regulations may serve as model regulations for local governments. The planning team may make recommendations on new State land use regulations for State lands and provide technical advice and assistance to the State for developing such regulations. The State may require local adoption of Statewide land use regulations as a condition for State aid, such as grants, loans, or technical assistance.

(c) *Federal land use regulations.* For federally owned lands outside of local or State jurisdictions, the responsible Federal agency adopts and enforces land use regulations which may serve as models for local or State regulations in like circumstances. The FEMA/State planning team may encourage the Federal agency to adopt land-use regulations currently used locally as being applicable to the Federal property. A Federal agency may require local or State governments to adopt and enforce certain hazard mitigation regulations as a condition for Federal assistance or participation in federally assisted programs. For example, the National Flood Insurance Program requires certain minimum floodplain

management regulations for participation by State or local government. Executive Order 11988 also imposes additional constraints on Federal grants or loan assistance within the floodplains. After reviewing a project application in accordance with FEMA's Floodplain Management regulation (44 CFR Part 9), the Regional Director may determine that no practical alternative to locating in floodplain exists. The Regional Director then shall require appropriate measures to minimize harm to the facility, to other property and to the floodplain and to preserve and restore the natural and beneficial values of the floodplain. Non-structural uses of floodplains and wetlands, such as open space and parks, shall be encouraged whenever practicable. Coastal zone management plans impose similar requirements for local, State, and Federal floodplain management regulation. As model hazard mitigation regulations become available to cope with other types of major disasters or emergencies including earthquakes, windstorms, and fires, the survey team may recommend them as requirements for federally assisted projects, or for adoption and enforcement by applicants for Federal grants or loan assistance. Survey or planning teams shall make findings and recommendations as appropriate for development or updating of model hazard-mitigation regulations by various Federal agencies for mitigation of hazards identified following a major disaster or emergency. The FEMA planner may arrange for Federal technical advice and assistance to local or State governments in modifying model land use regulations to satisfy local governments.

(d) *FEMA land use standards.* As the result of a major disaster or emergency, the Regional Director may determine that there is no practicable alternative to permitting approval of a grant or loan for an action within a high hazard area. For example, refer to 44 CFR Part 9 covering the eight-step decisionmaking process for floodplain management. In these cases where a practicable alternative exists outside the base floodplain, the Regional Director shall decline to approve a FEMA grant or loan unless the facility or structure is relocated. The Regional Director may take similar action for other types of disasters, such as tornadoes or earthquakes, where a practicable alternative exists outside the high hazard area. Under the Act, the Associate Director may prescribe appropriate standards as applicable for FEMA assisted projects as the result of a major disaster or emergency, as discussed in 44 CFR 206.402(d). When the Regional Director determines that restoration of a damaged or destroyed facility in a hazard area is not a practicable alternative, he/she may decline to authorize FEMA disaster assistance to restore facilities at the original site, or within the hazard area where such facilities are subject to repetitive heavy damages or destruction. When an applicant decides to relocate facilities being restored under section 402 of the Act outside of a high hazard area, purchase and development of the site is the applicant's responsibility. The Regional Director may approve Federal grant assistance for permanent restoration of eligible facilities erected on the new site: Provided, That the Regional director determines that the Federal grant assistance for such project is practicable and in the public interest.

§ 206.408 Construction practices.

(a) *General.* In certain cases, permanent repairs, alterations, or new construction to predisaster design may not provide usable facilities or structures safe from identified hazards. Alternate actions available are relocation; restorative work to conform to updated safe construction practices; or no approval for Federal funding of the proposed work. For FEMA-assisted projects under the Act, the applicant's decision on standards for restorative work shall be subject to review and approval by the Governor's Authorized Representative and the Regional Director. In identifying hazards and in its damage evaluation, the survey team shall inventory existing construction practices or standards related to damaged or destroyed facilities and may recommend adoption and enforcement by each applicant of additional safe construction practices.

(b) *Local standards.* When a major disaster or emergency occurs, the FEMA/State survey team shall inventory and evaluate the standards already adopted by the applicants for the types of repairs, reconstruction, or restorative work for which Federal grant or loan assistance is being requested. During the field surveys this team, or the FEMA/State planning team may also have model State or Federal standards available for consideration by the applicants. Such standards for new construction may be different from those for repairs or alterations to existing facilities or structures. Federal or State agencies may provide technical advice and assistance to local governments, particularly in the form of model standards to be modified for local use. In discussions of hazard mitigation measures, the survey team or the planning team may develop appropriate recommendations to the applicant for updating existing standards, or for adopting new ones. As the result of the major disaster or emergency, each applicant has the responsibility for adopting or updating appropriate standards and for enforcing them. Such local action for nonfederally funded projects shall be encouraged by the survey team and the planning team working together for a common purpose. An applicant may request State or FEMA technical advice and assistance in taking these actions. A new standard which the applicant submits for approval by the Associate Director shall include the scope of application of the standard; that is, whether the standard covers all public facilities or certain federally funded projects only. The standard shall also be accompanied by a description of local or State enforcement procedures.

(c) *State standards.* For State-owned buildings, structures, or facilities outside local jurisdictions, the responsible State agency adopts and enforces applicable standards. In some cases these may serve as a model for similar action by local governments. As a condition for State approval of grant or loan assistance as the result of a major disaster or emergency, the Governor's Authorized Representative may recommend to the Regional Director that the Associate Director prescribe certain standards for the FEMA-assisted project for hazard mitigation purposes. The State HMC may also provide technical advice and assistance on hazard mitigation measures to applicants, private organizations, and individuals.

(d) *Federal standards.* (1) For Federally owned buildings, structures, or facilities outside local or State jurisdictions, the responsible Federal agency adopts and enforces applicable Federal standards. These may serve as models for local or State adoption and enforcement in similar circumstances.

(2) The National Flood Insurance Program (NFIP) prescribes certain Federal standards for repairs, alterations, and new construction within floodplains as a condition for acceptance of a flood-prone community within the program. The Associate Director has prescribed as a standard, floodproofing measures which are appropriate as disaster proofing and practicable under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain. For other types of disaster, similar standards for hazard mitigation may be available and

appropriate for local, State and Federal use.

(3) The FEMA/State survey team, and the planning team, shall be aware of existing standards and shall recommend appropriate examples to applicants for consideration as hazard mitigation related to the major disaster or emergency.

(e) *FEMA standards.* Working with the State and applicants, through the survey team and the planning team, the Regional Directors shall encourage local adoption and enforcement on all projects, including nonfederally assisted projects, of appropriate standards for hazard mitigation. When a local or State government takes such action, the Regional Director may recommend that the Associate Director approve such standards as applicable for FEMA-assisted projects, after appropriate consultations with FEMA, with local and State officials, and with appropriate elected officials, and with appropriate local governments. Based on these consultations and all available information, the Associate Director may approve such standards as deviations applicable to FEMA assisted projects. When the local or State government declines to adopt and to enforce them for non-FEMA-assisted projects, the Associate Director, after appropriate FEMA, State and local consultations, may prescribe appropriate standards which are applicable only to FEMA assisted projects. (Refer also to 44 CFR 206.402(d).) The Regional Director may then approve FEMA grant or loan assistance to enable the applicant to comply with them on FEMA assisted projects. The Regional Director may suspend or refuse to approve any project application until he/she is satisfied that the approved work will result in a facility or structure safe and usable for the predisaster function, or for alternate functions proposed as flexible funding by the applicant in accordance with these regulations.

§ 206.409 Consultations.

(a) *General.* It is the intent of these regulations to provide opportunity for State and local officials and interested individuals to participate in the hazard mitigation process. At various points in the process, consultations and meetings with the FEMA/State survey team or planning team will provide input from these sources as detailed in the following paragraphs.

(b) *Survey team.* Members of the survey team shall make frequent contacts and have consultations with various applicants until the filed surveys are completed and appropriate hazard mitigation measures are recommended. The State HMC is responsible under the FEMA-State Agreement to arrange for appropriate consultations and notices to inform the public on those decision making processes involved in the work of the survey team. An applicant or the FEMA HMC may request such arrangements when desired.

(c) *Planning team.* Similarly, members of the FEMA/State planning team, in coordination with the survey team, shall make contacts and have consultations with various applicants or their planners as the planning team may require to accomplish its assigned tasks.

(d) *Meetings.* After the declaration of a major disaster or emergency, the Governor's Authorized Representative, in coordination with the Regional Director, schedules one or more meetings with local and State officials representing potential applicants for Federal assistance. These are generally known as "Applicant's Briefings". At these meetings FEMA and State staff members brief these local and State officials on FEMA policies and procedures for Federal grant or loan assistance under the Act. The Governor's Authorized Representative may arrange for the survey team and the planning team to participate in these briefings when desirable. The FEMA/State survey team and the planning team will normally schedule followup meetings later to discuss hazard mitigation measures with State and local officials. When necessary under FEMA's regulations pertaining to floodplain management and environmental review (44 CFR Parts 9 and 10) early public notice may be given of pending Federal actions. Based on the responses to such public notice, or when otherwise appropriate, the Regional Director may request the Governor's Authorized Representative to schedule public hearings for purposes of consultation with interested parties on hazard mitigation measures or problems.

(e) *Project management.* Normal FEMA procedures for damage survey reports, project applications, final inspections, audits, and final payments require local, State, and Federal contacts and coordination. Appeal procedures provide for further reviews and consultations of all interested parties including the Associate Director and his/her staff. These procedures provide documentation to support the hazard mitigation measures taken under section 409 of the Act.

§ 206.410 Compliance.

(a) *FEMA-State Agreement.* Requirements for evidence of compliance may vary for each major disaster or emergency depending on its nature, severity, and magnitude as well as on variations in the sources, capabilities, organization, and staffing of the local and State governments. Any specific requirement for State evidence of compliance with hazard mitigation measures may be spelled out in the FEMA-State Agreement.

(b) *Plans.* Review and acceptance of hazard mitigation plans submitted by the applicant or by the State in accordance with the FEMA-State Agreement provides the Governor's Authorized Representative in coordination with the Regional Director opportunities to schedule spot inspections, audits, and follow-up consultations. Through these activities, compliance with hazard mitigation objectives, schedules, and commitments may be verified.

(c) *Project administration.* As a condition for approval of a project application, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations or construction standards. In making Final Inspection Reports, Federal and State inspectors shall be specifically asked to verify compliance by the applicant with approved hazard mitigation standards. Similarly, auditors shall be required to verify such compliance in their audit reports.

(d) *Reporting.* The Regional Director may specify in the FEMA-State Agreement that the State provide reports of compliance with approved hazard mitigation plans or actions. The Governor's Authorized Representative may also require such progress reports from each applicant or he/she may submit one comprehensive report when scheduled. Prior to termination of the FEMA-State Agreement, the Governor's Authorized Representative shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance.

§ 206.411 Evaluation.

(a) *Critiques.* If requested by the Regional Director, the Governor's Authorized Representative shall arrange for a special critique of hazard mitigation plans and actions as the result of the major disaster or emergency. Each applicant shall be notified of the critique and may be invited to participate. As an alternative, a critique of hazard mitigation plans and actions may be scheduled to be covered

at the FEMA/State critique covering all disaster assistance activities as the result of the major disaster or emergency.

(b) *Final survey team report.* Prior to terminating the survey team activities, the FEMA HMC and State HMC shall prepare a joint report of their activities and recommendations to the Governor's Authorized Representative and to the Regional Director.

(c) *Final planning team report.* Upon completion of its assigned mission, as discussed in 44 CFR 206.405, the FEMA/State planning team shall make a final report of its activities, findings and recommendations to the Regional Director through the Governor's Authorized Representative. This final report shall specifically identify any remaining planning requirements for hazard mitigation as the result of the major disaster or emergency requiring State or FEMA followup.

(d) *Followup actions.* The Regional Director shall review the reports from the survey team and the planning team plus the report of compliance from the Governor's Authorized Representative. The Regional Director's report to the Associate Director shall focus on the positive results achieved through hazard mitigation plans and actions as the result of the major disaster or emergency. He/she also shall provide in the report specific findings and recommendations for Federal follow-up action which should be taken after termination of the FEMA-State Agreement to provide mitigation of such hazards as the result of future disasters. The Associate Director may then arrange for appropriate Federal actions as the result of each such recommendation.

§§ 206.412 through 206.430 [Reserved]

Subpart N—Hazard Mitigation Grant Program [Reserved]

PART 207—GREAT LAKES PLANNING ASSISTANCE [RESERVED]

2. A new Part 207 is added and reserved as set forth above.

Dated: March 10, 1989.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

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Tuesday
March 21, 1989

Part III

Department of Health and Human Services

Office of Human Development Services

Runaway and Homeless Youth Program; Availability of Financial Assistance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. HDS/ACYF/RHYP 13.623-89-1]

Runaway and Homeless Youth Program; Availability of Financial Assistance

AGENCY: Administration for Children, Youth, and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of availability of financial assistance for Basic Center grants.

SUMMARY: The Family and Youth Services Bureau of the Administration for Children, Youth, and Families announces the availability of fiscal year 1989 funds for the Runaway and Homeless Youth Basic Center Grants Program.

Competition for new Basic Center awards will be possible in all States. See the Table of Allocations by State and the accompanying narrative (Part I, Section F, "Available Funds for Basic Centers") for an explanation.

This program announcement consists of five parts and appendices. Part I provides background information for potential applicants to apply for Basic Center grants. Part II describes the requirements of the Runaway and Homeless Youth Act with regard to the services and activities that must be carried out by Basic Center grantees. Part III describes the application process for the Basic Center grants. Part IV provides instructions for completing the program narrative for Basic Center grant applications and also provides the criteria to be used in evaluating the applications. Part V provides instructions for completing an application for a Basic Center grant. Following Part V are the appendices to be consulted and the forms to be used during the preparation of the application.

DATE: The deadline or closing date for receipt of all applications under this announcement is May 10, 1989.

ADDRESS: Application receipt point: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 345-F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS-89-ACYF/RHYP/Basic Center.

FOR FURTHER INFORMATION CONTACT: Dr. W. Ray Rackley, Administration for Children, Youth, and Families, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, Telephone until March 17: (202) 755-7800; after March 17: (202) 245-0049.

SUPPLEMENTARY INFORMATION:

Part I: General or Background Considerations

A. Scope of This Program Announcement

This program announcement solicits applications and describes the application process for Basic Center grants under the Runaway and Homeless Youth Program. These grants will be competitively awarded during the third and fourth quarters of FY 1989. Project periods for grants will be three years.

B. Legislative Authority

Grants under this program are authorized by the Runaway and Homeless Youth Act (the Act), 42 U.S.C. 5701 *et seq.* This Act was enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415), as amended by the Juvenile Justice Amendments of 1977 (Pub. L. 95-115), the Juvenile Justice Amendments of 1980 (Pub. L. 96-509), the Juvenile Justice Amendments of 1984 (Pub. L. 98-473), and the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690).

C. Program Purpose

The purpose of the National Runaway and Homeless Youth Program is to provide financial assistance to establish or strengthen community-based centers that address the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

"Runaway Youth" means a person under 18 years of age who absents himself or herself from home or place of legal residence without the permission of parents or legal guardians (45 CFR 1351.1(1)).

"Homeless Youth" means a person under 18 years of ago who is in need of services and without a place of shelter where he or she receives supervision and care (45 CFR 1351.1(f)).

Programs receiving Runaway and Homeless Youth Act funding under this announcement are required to adhere to the requirements of 45 CFR Part 1351, the Runaway Youth Program Regulations. Applicants must develop their applications in accordance with those regulations and the review criteria which are included in this announcement.

D. Program Goals and Objectives

The program goals and objectives of the Runaway and Homeless Youth Act are to assist runaway and homeless youth centers to: (1) Alleviate the problems of runaway and homeless youth, (2) reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services, (3) strengthen family relationships and encourage stable living conditions for youth, and (4) help youth decide upon constructive courses of action.

E. Non-Discrimination in Services

All services under this program, including temporary shelter, must be provided in accordance with 45 CFR Parts 80, 81, and 84 pertaining to non-discrimination under programs receiving Federal assistance.

F. Available Funds for Basic Centers

In FY 1989, the Administration for Children, Youth and Families expects to award approximately $24,230,700 in Basic Center grants. This total will be divided among the States according to their respective populations under the age of 18, with the condition that the amount allotted to each State shall be not less than $75,000, and that the amounts allotted to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands shall be not less than $30,000 each. The District of Columbia and Puerto Rico are considered States, and therefore shall be allotted not less than $75,000.

Of this amount, $14,178,464 will be awarded in the form of *non-competing continuations* to current Basic Center grantees having one or two years remaining in their project periods. Grantees in this category will receive instructions from their respective OHDS Regional Offices on the procedures for applying for these continuation grants. These grantees, which are listed in Appendix G with expiration dates of 1990 or 1991, should *not* apply for funds under this **Federal Register** announcement.

Approximately $10,052,236 will be awarded under this announcement in the form of *new competitive* grants according to the procedures outlined in this announcement.

Approximately 134 new competitive Basic Center grants are expected to be awarded. Award recipients may include current grantees having project periods ending by September 30, 1989 and new applicants.

New Basic Center grant awards will be made from late June 1989 through the end of September 1989.

All grant applicants should request three-year project periods (Standard Form 424A (Rev. 4–88), Budget Information, Section E). While the project periods assigned to successful applicants will be for three years, the initial awards of grant funds will have budget periods of only one year. Subsequent awards of funds will depend upon satisfactory performance by the grantee and on the availability of appropriated funds.

Funding recommendations for the new competitive Basic Center applications will be based primarily on the scores assigned to the applications by the non-Federal reviewers who will evaluate each application according to the criteria described in Part IV, Section B, below, and on input from ACYF staff. Final decisions will be made by the Commissioner of ACYF.

The number of new Basic Center grants awarded within each State will depend upon the State's allocation for new grants and on the number of acceptable applications. All applications under this announcement will compete with other applicants in the State in which their services will be provided. In the event that an insufficient number of applications meeting the minimum criteria for funding is submitted from any State or jurisdiction, the Commissioner, ACYF, may reallocate any unused funds.

The Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds requested under this announcement (for details see below: Part III, Section H, "Grantee Share of the Project").

Section 366(a)(2) of the Runaway and Homeless Youth Act requires that not less than 90 percent of the funds appropriated for a fiscal year shall be available for support of local runaway and homeless youth centers. The following Table, which reflects this requirement, indicates the FY 1989 allocations for each State. In this Table, the amount shown in the column labeled "New Awards" is the amount available for competition in each State in FY 1989.

RUNAWAY AND HOMELESS YOUTH CENTERS, TABLE OF ALLOCATIONS BY STATE

[Total 57 States and Jurisdictions—Fiscal Year 1989]

Regions/States	Continuations	New awards	Totals
Region I			
Connecticut	$189,977	$90,188	$280,095
Maine	33,097	79,015	112,112
Massachusetts	404,510	90,188	494,698
New Hampshire	20,849	77,573	98,422
Rhode Island	75,161	9,570	84,731
Vermont	0	75,000	75,000
Region II			
New Jersey	434,997	242,484	677,481
New York	678,822	934,775	1,613,597
Puerto Rico	394,616	70,482	465,098
Virgin Islands	15,562	14,438	30,000
Region III			
Delaware	28,687	46,313	75,000
District of Columbia	45,692	29,308	75,000
Maryland	367,856	48,401	416,257
Pennsylvania	573,565	481,322	1,054,887
Virginia	272,319	267,520	539,839
West Virginia	0	181,303	181,303
Region IV			
Alabama	118,809	294,488	413,297
Florida	603,111	397,386	1,000,497
Georgia	150,000	492,331	642,331
Kentucky	240,530	127,996	368,526
Mississippi	265,214	27,831	293,045
North Carolina	362,004	239,996	602,000
South Carolina	310,244	37,932	348,176
Tennessee	287,039	175,839	462,878
Region V			
Illinois	554,223	568,746	1,122,969
Indiana	428,998	114,911	543,909
Michigan	657,827	252,388	910,215
Minnesota	161,995	249,082	411,077
Ohio	666,793	382,914	1,049,707
Wisconsin	224,793	244,745	469,538
Region VI			
Arkansas	148,261	91,503	239,764
Louisiana	431,105	55,823	486,928
New Mexico	147,010	18,383	165,393
Oklahoma	223,866	106,549	330,415
Texas	1,144,225	699,516	1,843,741
Region VII			
Iowa	178,286	92,558	270,844
Kansas	97,782	143,092	240,874
Missouri	373,221	110,747	483,968
Nebraska	141,381	15,502	156,883
Region VIII			
Colorado	262,236	61,149	323,385
Montana	0	83,251	83,251
North Dakota	0	75,000	75,000
South Dakota	17,926	57,074	75,000
Utah	204,953	27,781	232,734

RUNAWAY AND HOMELESS YOUTH CENTERS, TABLE OF ALLOCATIONS BY STATE—Continued

[Total 57 States and Jurisdictions—Fiscal Year 1989]

Regions/States	Continuations	New awards	Totals
Wyoming	0	75,000	75,000
Region IX			
Arizona	301,636	38,400	340,036
California	1,410,707	1,291,078	2,701,785
Hawaii	94,696	11,126	105,822
Nevada	79,134	14,478	93,612
American Samoa	0	30,000	30,000
Guam	16,886	13,114	30,000
Northern Marianas	2,980	27,020	30,000
Trust Territory (Palau)	0	30,000	30,000
Region X			
Alaska	32,435	42,565	75,000
Idaho	0	113,222	113,222
Oregon	182,613	71,211	253,824
Washington	272,756	159,778	432,534
Totals	14,178,464	10,052,236	24,230,700

Part II: Requirements of the Runaway and Homeless Youth Act

Section 311(a), 42 U.S.C. 5711(a), of the Runaway and Homeless Youth Act requires that grants shall be made among the States based upon their respective populations of youth under 18 years of age for the purpose of developing or strengthening local facilities to deal primarily with the immediate needs of runaway and homeless youth and their families in a manner which is outside the law enforcement structure and the juvenile justice system. The size of such grants shall be determined by the number of such youth in the community and the availability of existing services. Among applicants, priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

Section 312(a), 42 U.S.C. 5712(a), of the Act requires that, to be eligible for assistance under this part, an applicant shall propose to establish, strengthen, or fund an existing or proposed runaway and homeless youth center (a locally controlled community-based facility) providing temporary shelter and counseling services to juveniles who have left home without the permission of their parents or guardians or to other homeless juveniles.

Section 312(b), 42 U.S.C. 5712(b), of the Act requires that, in order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each center:

(1) Shall be located in an area which is demonstrably frequented or easily reachable by runaway youth;

(2) Shall have a maximum capacity of no more than twenty children with a ratio of staff to children of sufficient proportion to assure adequate supervision and treatment;

(3) Shall develop adequate plans for contacting the child's parents or relatives and assuring the safe return of the child according to the best interests of the child, for contacting local government officials pursuant to informal arrangements established with such officials by the runaway and homeless youth center, and for providing for other appropriate alternative living arrangements;

(4) Shall develop an adequate plan for assuring proper relations with law enforcement, social service, school system and welfare personnel, and for assuring the return of runaway youth to correctional institutions;

(5) Shall develop an adequate plan for aftercare counseling involving runaway youth and their families within the State in which the runaway and homeless youth center is located and for assuring, when possible, that aftercare services will be provided to those children who are returned to any State other than the State in which the center is located;

(6) Shall keep adequate statistical records profiling the children and family members which it serves, except that records maintained on individual runaway and homeless youth shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway or homeless youth; reports or other documents based on such statistical records shall not disclose the identity of individual runaway and homeless youth;

(7) Shall submit an annual report to the Secretary detailing how the center has been able to meet the goals of its plans and reporting the statistical summaries required by paragraph (6);

(8) Shall demonstrate its ability to operate under the accounting procedures and fiscal control devices as required by the Secretary;

(9) Shall submit a budget estimate with respect to the plan submitted by each center under this subsection; and

(10) Shall supply such other information as the Secretary deems reasonably necessary.

Section 313, 42 U.S.C. 5713, of the Act requires that an application by a State, locality or private entity for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 312. Priority shall be given to grants smaller than $150,000. In considering grant applications under this part, priority shall also be given to organizations which have demonstrated experience in the provision of services to runaway and homeless youth and their families.

A Runaway and Homeless Youth Grant may not cover the cost of constructing new facilities (Runaway and Homeless Youth Program, Administration Requirements, 45 CFR 1351.16). Costs for the renovation of existing structures may not normally exceed 15 percent of the grant award. HHS may waive this limitation upon written request under special circumstances based on demonstrated need (Runaway and Homeless Youth Program, Administration Requirements, 45 CFR 1351.15).

Other standards which Runaway and Homeless Youth Basic Center grantees are expected to meet are found in the Program Performance Standards (Appendix C).

Part III: Application Process

A. Eligible Applicants

States, Territories, localities, private for-profit and private non-profit agencies, and coordinated networks of such agencies are eligible to apply for Runaway and Homeless Youth Program Basic Center grants under this announcement unless they are part of the law enforcement structure or the juvenile justice system. Federally recognized Indian Tribes are eligible to apply for grants as local units of government. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private agencies.

Applicants are reminded that Basic Center grants may be awarded to agencies which operate a central shelter facility, *or* to agencies which provide emergency shelter through a series of host homes, *or* to agencies which employ a combination of shelter facility(ies) and host homes. (Host homes are facilities providing short-term shelter, usually the home of a family, under contract to accept runaway and homeless youth assigned by the Basic Center grantee, usually for a nominal fee, and licensed according to State or local laws.)

B. Assistance to Prospective Grantees

Potential grantees can receive informational assistance in developing applications from the appropriate ACYF Regional Youth Contacts listed in Appendix E or from the Family and Youth Services Bureau in Washington, DC (see address at the beginning of this announcement). Organizations may also receive information from the appropriate Coordinated Network grantee listed in Appendix F.

C. Application Requirements

To be considered for a Runaway and Homeless Youth Basic Center grant, each application must be submitted on the forms provided at the end of this announcement (see "F" below) and in accordance with the guidance provided herein. The application must be signed by an individual authorized to act for the applicant agency and authorized to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

D. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for OHDS grant applications by OMB.

E. Notification Under Executive Order 12372

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Therefore, the comment period for State processes will end on July 10, 1989, to allow time for HDS to review, consider and attempt to accommodate SPOC input. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommentations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to HDS, they should be addressed to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201, Attn: William J. McCarron, HDS–89–ACYF/RHYP/Basic Center.

A list of the Single Points of Contact for each State and Territory is included as Appendix D of this announcement.

F. Availability of Forms and Other Materials

A copy of each form required to submit an application for a Basic Center grant under the Runway and Homeless Youth Act and instructions for completing the application are provided in Appendices A and B. In addition, the Program Performance Standards and a description of the National Runway Switchboard are included at the end of this announcement as Appendix C. Addresses of the State Single Points of Contact (SPOCs) to which applicants should submit review copies of their proposals are listed in Appendix D. Title III of Pub. L. 98–473, the Runway and Homeless Youth Act, 42 U.S.C. 5701 *et seq.*, and the Code of Federal Regulations (CFR) Title 45, Part 1351, Runway Youth Program, may be found in major public libraries and at the Regional Offices listed in Appendix E at the end of this announcement. Additional copies of this announcement may be obtained from the Regional Offices or from the information contact person listed at the beginning of the announcement. Further general information may be obtained from the Coordinated Networks listed in Appendix F. A listing of all current Basic Center grantees is presented in Appendix G.

G. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined below. This review will be conducted in Washington, D.C. by teams of non-Federal experts knowledgeable in the areas of youth development and/or human service programs. These experts will review applications to determined that applicants will conform to the requirements of the Act (see Part II of this announcement) and the Program Performance Standards by applying the criteria presented in Part IV, Section B, and assigning a score to each application. To avoid conflict of interest, the non-Federal reviewers will be from States other than the one from which applications are being reviewed. The results of the competitive review will be analyzed by Federal staff and

taken into consideration by the Associate Commissioner of the Family and Youth Service Bureau who, in consultation with OHDS Regional officials, will recommend to the Commissioner the projects to be funded.

The ACYF Commissioner will make the final selection of the applicants to be funded. In the interest of effective geographic distribution of the basic center grants, the Commissioner may show preference for applications proposing services in areas that would not otherwise be served. The Commissioner may elect not to fund any applicants that have known management, fiscal or other problems or situations which make it unlikely that they would be able to provide effective services.

Successful applicants will be notified through the issuance of a Financial Assistance Award which sets forth the amount of fund granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support is given, the non-Federal share to be provided, and the total project period for which support is contemplated. Organizations whose applications have been disapproved will be notified in writing of that decision.

H. Grantee Share of the Project

The Runaway and Homeless Youth Act requires that the grantee provide a non-Federal match that equals at least 10 percent of the Federal funds awarded under this announcement. For example, if the applicant requests $100,000 in Federal funds (line 15a of Standard Form 424), then the sum of the non-Federal share (lines 15b, 15c, 15d, and 15e) must equal or exceed $10,000. For a project requesting $49,000 in Federal funds, the non-Federal share must equal or exceed $4,900.

The non-Federal portion may be cash, in-kind contributions or grantee incurred costs (including the facility, equipment or services) and must be project-related and allowable under the cost principles provided in 45 CFR Parts 74 and 92, the Department's regulations on the Administration of Grants. For-profit applicants are reminded that no grant funds may be paid as profit to any recipient of a grant or sub-grant (45 CFR 74.705).

Part IV: Criteria for Review and Evaluation of Applicants

The program narrative statement should be prepared in accordance with the following program narrative outline (45 CFR Part 92) and will be evaluated by the following review criteria. Applicants are invited to use the captions and numbering system presented below. The point values following each criterion heading indicate the numerical weight each section is worth in the review process. Each applicant will be evaluated on the discussion and documentation contained in the proposal which evidences the ability to provide the services mandated under this program. The program narrative should be clear and concise, and should not exceed 25 single-spaced pages plus such necessary attachments as organization charts, resumes, and letters of agreement and support. **Special Note:** Applications with narratives exceeding 25 pages will not be considered for funding.

A. Program Narrative Statement

1. Objectives and Need for Assistance

Pinpoint any relevant physical, economic, social, financial, institutional or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. Results or Benefits Expected

Identify results and benefits to be derived. The anticipated contribution to policy, practice, theory, and/or research should be indicated.

3. Approach

Outline a plan of action pertaining to the scope of the project or projects and detail how the proposed work will be accomplished for each project. Cite factors which might accelerate or decelerate the work and the reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. Geographic Location

Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

B. Review Criteria

1. Objectives and Need for Assistance (15 Points)

The extent to which the applicant demonstrates the need for assistance and clearly states the objectives of the project and the quality of supporting documentation as shown by a discussion of:

a. The incidence of runaway and homeless youth in the area to be served.

b. Demographic data on the youth.

c. The services needed by the youth and their families.

d. The adequancy of existing services.

e. The objectives of the services to be provided.

f. The relationship between the project objectives and the service and administrative components of the project (refer to the Program Performance Standards in Appendix C).

2. Results or Benefits Expected (10 Points)

The extent to which the results or benefits are clearly described in terms of the clients served (youth and their families) and the community at large.

The extent to which the results or benefits are described in terms of an objective or quantifiable evaluation.

3. Approach (70 Points)

The extent to which the proposed plan of action, tasks, design and methodology, evaluation, staffing and management, budget, collaborative efforts and sevice to runaway and homeless youth will contribute to attaining the expected results and benefits and will be carried out in accord with State and local laws regarding runaway and homeless youth, as shown by a discussion of:

a. *Tasks to be performed (24 points).* (1) A description of the services to be provided to runaway and homeless youth and their families and how they are or would be provided, including at a minimum: outreach/community relations; individual intake; case planning with each youth; temporary shelter; individual and/or group counseling; family counseling; service linkages; management of leisure time/recreational activities; alternative placements for youth who cannot return

home; and a summary of State and local laws relating to runaway and homeless youth and how the project does or will comply with these laws.

(2) A description of how shelter services will be provided either directly or indirectly on a 24-hour basis; any applicable local and State licensing requirements and how they have been or will be achieved; and certification that no more than 20 youth will be housed in a single facility with a ratio of staff to youth of sufficient proportion to assure adequate supervision and treatment.

(3) A statement of the procedures that are or will be employed for contacting a youth's parents or legal guardians within the timeframes established by State law or, in the absence of State requirements, within 24 hours but not to exceed 72 hours following the youth's admission into the project.

(4) A statement of the procedures that are or will be employed for verifying the safe arrival of youth either at home or in an alternative living arrangement.

(5) A statement of the procedures that are or will be employed for providing or arranging for aftercare services (the range of services provided to youth who have left the runaway and homeless youth center), including a discussion of the extent to which the program has or will have the capacity to provide these services, either directly or indirectly through linkages with other programs of a similar nature, including services both to those youth who are returning to a place in the same locality or State and to those youth returning beyond the State in which the applicant center is located.

(6) A description of how the center has linked or will link its activities with the National Runaway Switchboard which has been developed to facilitate communication between runaway and homeless youth and their families.

(7) A description of how the center has or will develop working relationships with law enforcement, juvenile court, school system, and local public and private agency personnel, including procedures for returning youth who have run away from correctional institutions in accordance with applicable Federal, State and local laws.

(8) A description of how the center has demonstrated active participation or will participate in local, State and regional networks or coalitions of youth serving agencies or other human services organizations.

b. Design and Methodology (6 points). An identification of the specific problems(s), issue(s), and objectives of the proposed project and a detailed discussion of how the tasks described under subparagraph a., above, will accomplish these project objectives.

c. Data Collection and Reporting (5 points). A description of the kinds of data to be collected and the reports to be submitted, including:

(1) The identification of the kinds of data to be collected and a discussion of how the project will maintain adequate statistical records profiling the youth and families served; and a description of the procedures that are or will be employed to ensure the confidentiality of this information.

(2) Quantitative quarterly and annual reports of the accomplishments that have been achieved, such as the number of runaway and homeless youth and their families served.

d. Staffing and Management (15 points). The extent to which the proposed staffing and management will contribute to achieving the results or benefits expected as indicated by:

(1) Staffing Pattern. A description of the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contribution to be made by senior staff. A statement of how the program is or will be staffed; how staff are or will be selected, supervised and trained; how the organization ensures or will ensure 24-hour accessibility to its services and an adequate youth/adult staff ratio at all times; and how specific roles for youth have or will be defined in planning, policy formation and service delivery. A listing of all project sites. The submission of a clear organizational chart.

(2) Competence of Staff. An indication of the qualifications of the project staff team, the variety of skills to be used, relevant experience, educational background, and the demonstrated ability to produce final results, as shown by:

(a) Position descriptions and résumés or qualifications required for key positions in the program (e.g., the Executive Director, Counseling Supervisor), and a listing of Board members, as applicable. A description of how the organization involves or will involve other members of the community and State in its program. Demonstration that the organization has legal and fiscal viability in accordance with the provisions of 45 CFR Parts 74 and 92.

(b) A description of the recruitment and training efforts for staff and volunteers in the organization, including the roles staff and volunteers have or will have in service delivery, outreach in the community, and as members of the Board of Directors or advisory group.

(3) Adequacy of Resources. Demonstration of the adequacy of the physical facilities in which the youth will be served, including safety and health standards.

e. Budget (10 points). The relationship of the proposed budget to the level of effort required to attain project objectives. Demonstration that the project's costs and the average costs per youth served are reasonable in view of the anticipated results. The relationship of the proposed project budget to the total budget of the applicant agency.

f. Collaborative Efforts (5 points). Submission of the required forms evidencing that the applicant will comply with program requirements provided in the Code of Federal Regulations, Title 45, Part 1351. A discussion of collaborative efforts with other agencies or organizations, including written assurances if appropriate.

g. Service to Runaway and Homeless Youth (5 points). Evidence that the applicant organization has demonstrated experience in the provision of services to runaway and homeless youth, and evidence that the applicant will serve runaway and homeless youth and will not serve simply as a holding or transition facility for youth already under care of other youth agencies such as foster care, child protective services, juvenile probation, or drug treatment shelters.

4. Geographic Location (5 points)

The extent of evidence that the center is or will be located in an area which is frequented or easily reached by runaway and homeless youth, as shown by a map or other graphic aids.

Part V: Instructions for Completing the Application

A. Contents of Application

Each copy of the application must contain the following items in the order listed:

1. Standard Form 424 (REV 4–88) (pages i–ii)

2. Standard Form 424A (REV 4–88) (pages iii–iv)

3. Standard Form 424B (REV 4–88) (pages v–vi)

4. Standard Form HHS–641 (REV 7–84) (page vii)

5. Certification Regarding Drug-Free Workplace (page viii)

6. Standard Form "Application Certifications for Profit Making Organizations" (REV 1–83) (Submit only if appropriate.) (page ix)

6. Program Narrative Statement (pages 1 and following; 25 pages maximum, single-spaced).

Special Note.—Applications with narrative statements exceeding 25 single-spaced pages will not be considered for funding.

7. Supporting Documents (pages SD–1, SD–2, etc.; 10 pages maximum)

B. Instructions for Preparing Application

Prepare your application in accordance with the following instructions:

1. Standard Forms 424 and 424A: Follow the instructions in Appendix B.

2. Standard Forms 424B, HHS 641, and "Application Certifications for Profit Making Organizations": Self explanatory.

3. Program Narrative Statement: Follow the outline of Review Criteria (Part IV).

4. Supporting Documentation: Self-explanatory.

Each application will be copied by the Government in order to provide the total of six copies needed for review panels and filing. To make copying as trouble-free and accurate as possible, the following requirements must be followed:

a. Applicants may attach *only photocopies* (no originals) of any additional materials, such as resumes, letters of support or agreement, news clippings, or descriptions of the program's participation in local, State or regional coalitions of youth service agencies which would give further support to the application. *Resumes must be limited to one page.*

b. The absolute maximum for supporting documentation is 10 pages, exclusive of letters of support or agreement. Documentation which ACYF staff determines to be excessive will not be provided to the independent panel reviewers. Applicants may include as many letters of support or agreement as are appropriate.

Note.—Include only photocopies of the materials. Do not use separate covers, binders, clips, tabs, plastic inserts, pages with pockets, separately bound brochures, folded maps or charts, or any other items that cannot be processed easily on a photocopy machine with automatic feed. Do not bind, clip, or fasten in any way separate subsections of the application, including supporting documentation.

C. Application Submission

To be considered for a grant, an applicant must submit one signed original and two copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink. Each copy should be stapled (back and front) in the upper left corner. All copies of a single application should be submitted in a single package.

The Catalog of Federal Domestic Assistance Number (13.623) and Title (Runaway and Homeless Youth Program) must be clearly identified on the application (SF 424, box 10).

1. Closing Date for the Receipt of Applications

The closing date for receipt of applications under this announcement is: May 10, 1989. Applications must be mailed or hand delivered to: Department of Health and Human Services, HDS/Grants and Contracts Management Division, 200 Independence Avenue, SW., Room 345–F, Hubert H. Humphrey Building, Washington, DC 20201. Attn: William J. McCarron, HDS–89–ACYF/RHYP/Basic Center.

2. Deadline for Submission of Applications

a. *Deadline.* Hand delivered applications will be accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process under chapter 1.62 of the Departmental Grants Administration Manual.

(Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria in paragraph "a" of this section are considered late applications. HDS will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* HDS may extend the deadlline for all applicants because of acts of God such as floods or hurricanes, when there is a widespread disruption of the mails or when HDS determines an extension to be in the best interests of the government. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Number 13.623, Runaway and Homeless Youth Program)

Dated: March 9, 1989.

Dodie Truman Borup,

Commissioner, Administration for Children, Youth and Families.

Approved: March 10, 1989.

Sydney Olson,

Assistant Secretary for Human Development Services.

BILLING CODE 4130-01-M

APPENDIX A: FORMS AND ASSURANCES

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School Dist
I State Controlled Institution of Higher Learning
J Private University
K Indian Tribe
L Individual
M Profit Organization
N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in boxes) ☐ ☐

A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (specify)

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a Federal	$	.00
b Applicant	$	.00
c State	$	.00
d Local	$	.00
e Other	$	.00
f Program Income	$	.00
g TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a Typed Name of Authorized Representative	b Title	c Telephone number
d Signature of Authorized Representative		e Date Signed

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-REMARKS *Please reference the proper item number*

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7 Program Income	$	$	$	$	$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges.	22. Indirect Charges.
23. Remarks	

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ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse. (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

DEPARTMENT OF HEALTH AND HUMAN SERVICES
ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "recipient") HEREBY AGREES THAT it will comply with section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), all requirements imposed by the applicable HHS regulation (45 C.F.R. Part 84), and all guidelines and interpretations issued pursuant thereto.

Pursuant to § 84.5(a) of the regulation [45 C.F.R. 84.5(a)], the recipient gives this Assurance in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts (except procurement contracts and contracts of insurance or guaranty), property, discounts, or other federal financial assistance extended by the Department of Health and Human Services after the date of this Assurance, including payments or other assistance made after such date on applications for federal financial assistance that were approved before such date. The recipient recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this Assurance and that the United States will have the right to enforce this Assurance through lawful means. This Assurance is binding on the recipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this Assurance on behalf of the recipient.

This Assurance obligates the recipient for the period during which federal financial assistance is extended to it by the Department of Health and Human Services or, where the assistance is in the form of real or personal property, for the period provided for in § 84.5(b) of the regulation [45 C.F.R. 84.5(b)].

The recipient: [Check (a) or (b)]

a. ( ) employs fewer than fifteen persons;

b. ( ) employs fifteen or more persons and, pursuant to § 84.7(a) of the regulation [45 C.F.R. 84.7(a)], has designated the following person(s) to coordinate its efforts to comply with the HHS regulation:

_____
Name of Designee(s) — Type or Print

Name of Recipient — Type or Print	Street Address
(IRS) Employer Identification Number	City
Area Code — Telephone Number	State Zip

I certify that the above information is complete and correct to the best of my knowledge.

Date	Signature and Title of Authorized Official

If there has been a change in name or ownership within the last year, please PRINT the former name below:

PLEASE RETURN ORIGINAL TO: Office for Civil Rights, Room 5627/B North Building, 330 Independence Avenue, N.W., Washington, D.C. 20201.

RETURN COPY TO: Grants Management Office

HHS-641 (7/84) REV)
GPO 808-714

HHS GRANTS MANAGEMENT

U.S. Department of Health and Human Services

Certification Regarding

Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and,

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and,

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

APPLICATION CERTIFICATIONS FOR PROFIT MAKING ORGANIZATIONS

Applicants who are For Profit Organizations shall complete the following certification review when applying for HDS Financial Assistance.

1. Small Business Certification

The applicant ( ) is, ( ) is not, a small business concern. A small business concern is defined as a business, including its affiliates, which is independently owned and operated, is not dominant in the field of operation and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.

2. Minority Business Enterprise Certification

The applicant ( ) is, ( ) is not, a minority business enterprise. A minority business enterprise is defined as a business, at least 51 percent of which is owned, controlled, and managed by minority group members who are citizens of the U.S. In case of a corporation, 51 percent of all classes of voting stock of such corporations must be owned by an individual(s) determined to be minority. For the purpose of this definition, minority group members are Black Americans, Hispanic Americans, Native Americans, (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia, or Taiwan) and members of other groups designated from time to time by the Small Business Administration according to the procedures set forth at 13 CFR Part 124.1.

3. Woman-Owned Business Certification

The applicant ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management.

4. Small Business Innovation Research Act

This application ( ) is, ( ) is not, submitted under the Small Business Innovation Research Act.

For Profit Organizations must submit this form with the completed application.

HDS GRANTS MANAGEMENT 1/83

BILLING CODE 4130-01-C

Appendix B.—Instructions for Applying for Federal Assistance From HDS Programs

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).—For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Lines 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles indentical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explan amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Appendix C—Program Performance Standards and National Runaway Switchboard Description

I. Program Performance Standards

A. Overview

The program performance standards established by the Family and Youth Services Bureau for its funded centers relate to the methods and processes by which the needs of runaway and homeless youth and their families are being met, as opposed to the outcome of the services provided on the clients served. The program performance standards, and the related criteria and indicators, as initially published in March 1977, were developed by the Bureau through a functional analysis of the service and administrative components of the runaway youth projects, and were revised based upon the contents and feedback provided by the FY 1975 funded projects; they have subsequently been further revised, based upon the experience of the Bureau and its funded centers in their implementation. The standards relate to the basic program components enumerated in section 317 of the Runaway and Homeless Youth Act and as further detailed in the Regulations and Program Guidance governing the implementation of the Act.

The program performance standards are the general principles against which a judgment can be made to determine whether a service or an administrative component of a basic center has achieved a particular level of attainment.

Fourteen program performance standards, with related criteria, are established by the Bureau for the projects funded under the Runaway and Homeless Youth Act. Nine of these standards relate to service components (outreach, individual intake process, temporary shelter, individual and group counseling, family counseling, service linkages, aftercare services, recreational programs, and case disposition), and five to administrative functions or activities (staffing and staff development, youth participation, individual client files, ongoing project planning, and board of directors/advisory body).

Although fiscal management is not included as a program performance standard, it is viewed by FYSB as being an essential element in the operation of its funded projects. Therefore, as validation visits are made, the regional ACYF specialist and/or staff from the Office of Fiscal Operations will also

review the project's financial management activities.

FYSB views these program performance standards as constituting the minimum standards to which its funded projects should conform. The primary assumption underlying the program performance standards is that the service and administrative components which are encompassed within these standards are integral (but not sufficient in themselves) to a program of services which effectively addresses the crisis and long-term needs of runaway and homeless youth and their families.

The program performance standards (and the Program Performance Standards Self-Assessment Instrument) are designed to serve as a developmental tool, and are to be employed by both the project staff and the regional ACYF staff specialists in identifying those service and administrative components and activities of individual projects which require strengthening and/or development either through internal action on the part of staff or through the provision of external technical assistance.

B. *Program Performance Standards and Criteria*

The following constitute the program performance standards and criteria established by the Bureau for its funded centers. Each standard is numbered, and each criterion is listed after a lower case letter.

1. Outreach. The project shall conduct outreach efforts directed towards community agencies, youth, and parents.

2. Individual Intake Process. The project shall conduct an individual intake process with each youth seeking services from the project. The individual intake process shall provide for:

a. Direct access to project services on a 24-hour basis.

b. The identification of the emergency service needs of each youth and the provision of the appropriate services either directly or through referrals to community agencies and individuals.

c. An explanation of the services which are available and the requirements for participation, and the securing of a voluntary commitment from each youth to participate in project services prior to admitting the youth into the project.

d. The recording of basic background information on each youth admitted into the project.

e. The assignment of primary responsibility to one staff member for coordinating the services provided to each youth.

f. The contact of the parent(s) or legal guardian of each youth provided temporary shelter within the timeframe established by State law or, in the absence of State requirements, preferably within 24 but within no more than 72 hours following the youth's admission into the project.

3. Temporary Shelter. The project shall provide temporary shelter and food to each youth admitted into the project and requesting such services.

a. Each facility in which temporary shelter is provided shall be in compliance with State and local licensing requirements.

b. Each facility in which temporary shelter is provided shall accommodate no more than 20 youth at any given time.

c. Temporary shelter shall normally not be provided for a period exceeding two weeks during a given stay at the project.

d. Each facility in which temporary shelter is provided shall make at least two meals per day available to youth served on a temporary shelter basis.

e. At least one adult shall be on the premises whenever youth are using the temporary shelter facility.

4. Individual and Group Counseling. The project shall provide individual and/or group counseling to each youth admitted into the project.

a. Individual and/or group counseling shall be available daily to each youth admitted into the project on a temporary shelter basis and requesting such counseling.

b. Individual and/or group counseling shall be available to each youth admitted into the project on a non-residential basis and requesting such counseling.

c. The individual and/or group counseling shall be provided by qualified staff.

5. Family Counseling. The project shall make family counseling available to each parent or legal guardian and youth admitted into the project.

a. Family counseling shall be provided to each parent or legal guardian and youth admitted into the project and requesting such services.

b. The family counseling shall be provided by qualified staff.

6. Service Linkages. The project shall establish and maintain linkages with community agencies and individuals for the provisions with community agencies and individuals for the provision of those services which are required by youth and/or their families but which are not provided directly by the centers.

a. Arrangements shall be made with community agencies and individuals for the provision of alternative living arrangements, medical services, psychological and/or psychiatric services, and the other assistance required by youth admitted into the project and/or by their families which are not provided directly by the project.

b. Specific efforts shall be conducted by the project directed toward establishing working relationships with law enforcement and other juvenile justice system personnel.

7. Aftercare Services. The project shall provide a continuity of services to all youth served on a temporary shelter basis and/or their families following the termination of such temporary shelter both directly and through referrals to other agencies and individuals.

8. Recreational Program. The project shall provide a recreational/leisure time schedule of activities for youth admitted to the project for residential care.

9. Case Disposition. The project shall determine, on an individual case basis, the disposition of each youth provided temporary shelter, and shall assure the safe arrival of each youth home or to an alternative living arrangement.

a. To the extent feasible, the project shall provide for the active involvement of the youth, the parent(s) or legal guardian(s), and the staff in determining what living arrangement constitutes the best interest of each youth.

b. The project shall assure the safe arrival of each youth home or to an alternative living arrangement, following the termination of the crisis services provided by the project, by arranging for the transportation of the youth if he/she will be residing within the area served by the project; or by arranging for the meeting and local transportation of the youth at his/her destination if he/she will be residing beyond the area served by the project.

c. The project shall verify the arrival of each youth who is not acompanied home or to an alternative living arrangement by the parent(s) or legal guardian(s), project staff or other agency staff within 12 hours after his/her scheduled arrival at his/her destination.

10. Staffing and Staff Development. Each center is required to develop and maintain a plan for staffing and staff development.

a. The project shall operate under an affirmative action plan.

b. The project shall maintain a written staffing plan which indicates the number of paid and volunteer staff in each job category.

c. The project shall maintain a written job description for each paid volunteer staff function which describes both the major tasks to be performed and the qualifications required.

d. The project shall provide training to all paid and volunteer staff (including youth) in both the procedures employed by the project and in specific skill areas as determined by the project.

e. The project shall evaluate the performance of each paid and volunteer staff member on a regular basis.

f. Case supervision sessions, involving relevant project staff, shall be conducted at least weekly to review current cases and the types of counseling and other services which are being provided.

11. Youth Participation. The center shall actively involve youth in the design and delivery of the services provided by the project.

a. Youth shall be involved in the ongoing planning efforts conducted by the project.

b. Youth shall be involved in the delivery of the services provided by the project.

12. Individual Client Files. The project shall maintain an individual file on each youth admitted into the project.

a. The client file maintained on each youth shall, at a minimum, include an intake form which minimally contains the basic background information required by FYSB; counseling notations; information on the services provided both directly and through referrals to community agencies and individuals; disposition data; and, as applicable, any follow-up and evaluation data which are compiled by the center.

b. The file on each client shall be maintained by the project in a secure place and shall not be disclosed without the written permission of the client and his/her parent(s) or legal guardian(s) except to project staff, to the funding agency(ies) and its(their) contractor(s), and to a court involved in the disposition of criminal charges against the youth.

13. Ongoing Center Planning. The center shall develop a written plan at least annually.

a. At least annually, the project shall review the crisis counseling, temporary shelter, and aftercare needs of the youth in the area served by the center and the existing services which are available to meet these needs.

b. The project shall conduct an ongoing evaluation of the impact of its services on the youth and families it serves.

c. At least annually, the project shall review and revise, as appropriate, its goals, objectives, and activities based upon the data generated through both the review of youth needs and existing services (13a) and the follow-up evaluations (13b).

d. The project's planning process shall be open to all paid and volunteer staff, youth, and members of the Board of Directors and/or Advisory Body.

14. Board of Directors/Advisory Body (Optional). It is strongly recommended that the centers have a Board of Directors or Advisory Body.

a. The membership of the project's Board of Directors or Advisory Body shall be composed of a representative cross-section of the community, including youth, parents, and agency representatives.

b. Training shall be provided to the Board of Directors or Advisory Body designed to orient the members to the goals, objectives, and activities of the project.

c. The Board of Directors or Advisory Body shall review and approve the overall goals, objectives, and activities of the project, including the written plan developed under 13.

II. National Runaway Switchboard

The National Runaway Switchboard/National Communication System is a confidential telephone information, referral and crisis counseling service to runaway and otherwise homeless youth and their families in the United States, including Alaska and Hawaii. It is also a technical resource to assist youth-serving agencies in delivering more effective services by facilitating communication among service providers about specific cases. In essence, the National Communications System is designed to provide a neutral and available channel of communication between runaway and homeless youth and their families and to refer runaway and otherwise homeless youth and their families to the appropriate agency for assistance with their immediate crisis as well as working toward resolving their long-term problems. The National Runaway Switchboard (NRS) has become a major conduit for the reunification of runaway youth and their families. Also for over the past three years, the NRS has served as the National Youth Suicide Hotline, providing crisis intervention counseling and referral services to youth and their families.

The significant reasons for the development of the NRS are: (1) The interstate nature of the runaway and homeless youth problem, and (2) the increased vulnerability of youth to various forms of exploitation when they are away from home and/or in unfamiliar environments.

Approximately 2.26 million youth have been served by NRS from 1975 to the present. The current grant to operate NRS is held by Metro Help, Inc., 3080 N. Lincoln, Chicago, Illinois 60614; Lora Thomas, Executive Director; telephone: (312) 880–9860.

Appendix D—Executive Order 12372—State Single Points of Contact

Alabama

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3465 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105–0939, Tel. (205) 284–8905.

Alaska

None.

Arizona

Department of Commerce, State of Arizona, Janice Dunn, Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255–5004.

Arkansas

Joe Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371–1074.

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323–7480.

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Rm. 520, Denver, Colorado 80203, Tel. (303) 866–2156.

Connecticut

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106–4459, Tel. (203) 566–3410.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736–4204.

District of Columbia

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Rm. 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Tel. (202) 727–9111.

Florida

George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488–8114.

Georgia

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, SW.—Room 608, Atlanta, Georgia 30334, Tel. (404) 656–3855.

Hawaii

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu, Hawaii 96813, Tel. (808) 548–3016 or 548–3085.

Idaho

None.

Illinois

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Tel. (217) 782–8639.

Indiana

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232–5604.

Iowa

Stephen R. McCann, Division of Community Progress, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Tel. (515) 281–3725.

Kansas

None.

Kentucky

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, Tel. (502) 564–2382.

Louisiana

Colby S. La Place, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342–9790.

Maine

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Tel. (207) 289–3261.

Maryland

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Tel. (301) 225–4490.

Massachusetts

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727–3253.

Michigan

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48909, Tel. (517) 373–1838.

Note: Please direct correspondence and questions to: Don Bailey, Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911 (517) 335–1838.

Minnesota

None.

Mississippi

Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202, Tel. (601) 359–3150.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 460, Truman Building, Jefferson City, Missouri, 65102, Tel. (314) 751–4834.

Montana

Deborah Davis, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, Montana 59620, Tel. (406) 444–5522.

Nebraska

None.

Nevada

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885–4420.

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885–4420.

New Hampshire

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, 2½ Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271–2155.

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625–0803, Tel. (609) 292–6613.

Note: Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Tel. (609) 292–9025.

New Mexico

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827–3885.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224, (518) 474–1605.

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733–0499.

North Dakota

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224–2094.

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, OH 43266–0411, Tel. (614) 466–0698.

Note: Please direct correspondence and questions to: Linda E. Wise.

Oklahoma

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843–9770.

Oregon

Attn: Delores Street, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street, NE., Salem, OR 97310, (503) 373–1998.

Pennsylvania

Laine A. Heltebridle, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783–3700.

Rhode Island

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277–2656.

Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734–0435.

South Dakota

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773–3212.

Tennessee

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741–1676.

Texas

Thomas C. Adams, Office of the Budget and Planning, Office of the Governor, P.O. Box 12427, Austin, Texas 78711, Tel. (512) 463–1778.

Utah

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533–5245.

Vermont

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109

State Street, Montpelier, Vermont 05602. Tel. (802) 828–3326.

Virginia

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219. Tel. (804) 786–4474.

Washington

Catherine Townley, Coordinator, Intergovernmental Review Process, Department of Community Development, Ninth and Columbia Building, Olympia, Washington 98504–4151. Tel. (206) 753–4978.

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305. Tel. (304) 348–4010.

Wisconsin

James R. Klauser, Secretary, Wisconsin Department of Administration, 101 South Webster, CEF 2, P.O. Box 7864, Madison, Wisconsin 53707–7864. Tel. (608) 266–1741.

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

Wyoming

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002. Tel. (307) 777–7574.

American Samoa

None.

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, GU 96910. (671) 472–2285.

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 and 33 Kongens Gade, Charlotte Amalle, VI 00802. (809) 774–0750.

Puerto Rico

Ms. Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985. Tel. (809) 727–4444.

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM Northern Mariana Islands 96950.

Appendix E—Regional Youth Contacts

Region I: Sue Rosen, Office of Human Development Services, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203 (CT, MA, ME, NH, RI, VT), (617) 565–1144

Region II: Dennis Coughlin, Office of Human Development Services, 26 Federal Plaza, Room 4149, New York, NY 10278 (NJ, NY, PR, VI), (212) 264–2974

Region III: David Lett, Office of Human Development Services, 3535 Market Street, Post Office Box 13714, Philadelphia, PA 19101 (DC, DE, MD, PA, VA, WV), (215) 596–1224

Region IV: Viola Brown, Office of Human Development Services, 101 Marietta Tower, Suite 903, Atlanta, GA 30323 (AL, FL, GA, KY, MS, NC, SC, TN), (404) 221–2128

Region V: William Sullivan, Office of Human Development Services, 105 West Adams, 23rd Floor, Chicago, IL 60603 (IL, IN, MI, MN, OH, WI), (312) 353–4241

Region VI: Eddie Falcon, Office of Human Development Services, 1200 Main Tower, 20th Floor, Dallas, TX 75202 (AR, LA, NM, OK, TX), (214) 767–8596

Region VII: Steve Nash, Office of Human Development Services, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106 (IA, KS, MO, NE), (816) 426–5401

Region VIII: Juan Cordova, Office of Human Development Services, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294 (CO, MT, ND, SD, UT, WY), (303) 844–3106

Region IX: Ray Myrick, Office of Human Development Services, 50 United Nations Plaza, San Francisco, CA 94102 (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–6178

Region X: Steve Ice, Office of Human Development Services, 2201 Sixth Avenue, Mail Stop RX 32, Seattle, WA 98121 (AK, ID, OR, WA), (206) 442–0482.

Appendix F—Coordinated Networks

Region I: Nancy Jackson, Massachusetts Committee for Children and Youth, 14 Beacon Street, Suite 706, Boston, MA 02108, (617) 742–8555

Region II: Margo Hirsch, Empire State Coalition, 666 Broadway, 8th Floor, New York, NY 10012, (212) 674–2121

Region III: (Being served by the Region IV Network)

Region IV: Gail L. Kurtz, Southeastern Network of Runaway Youth, 337 South Milledge Ave., Suite 209, Athens, GA 30605, (404) 354–4568

Region V: Denis Murstein, Youth Network Council of Chicago, Inc., 506 South Wabash Avenue, Suite 520, Chicago, IL 60605, (312) 427–2710

Region VI: Theresa Andreas-Tod, Southwest Network of Youth Services, Inc., P.O. Box 6503, Austin TX 78762, (512) 478–6676

Region VII: Jack McClure, M.I.N.K.: A Network for Runaway and Homeless Youth, P.O. Box 14403, Parkview, MO 64152, (816) 741–5638

Region VIII: Linda Wood, Mountain Plains Youth Network, 1424 W. Century Ave., Suite 101, Bismarck, ND 58501, (701) 255–7229

Region IX: Nancy Sefcik, Western States Youth Services, 221 Petaluma Blvd. So., Sutie B Sacramento, CA 95814, (916) 447–7164

Region X: Ginger Baggett, Northwest Network of Runaway and Youth Services, 94 Third Street, Ashland, OR 97520, (503) 482–8890

Appendix G—Runaway and Homeless Youth Grantees—FY 1988

Note: The date at the end of each entry (e.g., 1989) indicates the fiscal year during which the grant will expire.

REGION I

Connecticut

Council of Churches, 3030 Park Avenue, Bridgeport, CT 06604. John Cottrell, (203) 374–9471, 1989.

Quinebaug Valley Youth Services Bureau, P.O. Box 812, North Grosvenordale, CT 06255. Joel Cooper, (203) 923–9526, 1989.

Educational Resources, 90 North Main Street, West Hartford, CT 06107. Selma Lobel, (203) 521–8035, 1990.

The Youth Shelter, 105 Prospect Street, Greenwich, CT 06830. Shari Shapiro, (203) 661–2599, 1991.

Youth Continuum of TRI-RYC, 844 Grand Avenue, New Haven, CT 06521. Michael Rowe, (203) 562–3396, 1991.

Waterbury Youth Service System, 95 North Main Street, Waterbury, CT 06702. Tom Donaldson, (203) 754–2181, 1991.

Maine

Youth and Family Services, P.O. Box 502, Skowhegan, ME 04976. Ron Herbert, (207) 474–8311, 1989.

Youth Alternatives of S. Maine, 175 Lancaster Street, Portland, ME 04101. George Lopes, (207) 772–4651, 1989.

New Beginnings, 491 Maine Street, Lewiston, ME 04240. Barbara Kawliche, (207) 946–7272, 1991.

Massachusetts

Newton-Wellesley-Weston-Needham, 1301 Centre, Newton, MA 02159. Eric Masi, (617) 872–5611, 1989.

Project RAP, 3 Broadway, Beverly, MA 01915. Nancy Pia, (617) 927–4506, 1990.

Franklin/Hampshire Mental Health Center, 17 New South Street, Northampton, MA 01060. Deborah Ekstrom, (617) 732–3121, 1990.

The Key Program, 484 West Street, Pittsfield, MA 01201. Randy Brewer, (413) 442–1503, 1990.

North Suffolk Mental Health, 5301 Broadway, Chelsea, MA 92150. Virginia Doocy, (617) 889–4860, 1990.

Springfield YWCA, 137 Chestnut Street, Springfield, MA 01103. Mary Reardon Johnson, (617) 732–3121, 1990.

The Bridge, 47 West Street, Boston, MA 02111. Sister Barbara Whelan, (617) 423–9575, 1991.

Wayside Community Programs, 4 Thurber Street, Framingham, MA 01701. Eric Masi, (617) 872–5611, 1991.

Brookline Community Mental Health Center, 43 Garrison Road, Brookline, MA 02146. Joan Sokoloff, (617) 277–8107, 1991.

New Hampshire

Child and Family Services, 99 Hanover Street, Manchester, NH 03105. Reed Carver, (603) 668–1920, 1989.

Community Youth Advocates, 36 Tremont Square, Claremont, NH 03743. Holly Johnson, (603) 543–0427, 1990.

Rhode Island

Stopover Shelters, 3380 East Main Road, Portsmouth, RI 02871. Peter Marshall, (401) 683–1824, 1991.

Vermont

Washington County Youth Service Bureau, Box 627, Montpelier, VT 05602. Tom Howard, (802) 229–9151, 1989.

REGION II

New Jersey

Anchor House, 482 Centre Street, Trenton, NJ 08611. Judith Donohoe, (609) 396–8329, 1989.

Crossroads, P.O. Box 98, Burlington, NJ 08016. Jeanne Stoops, (609) 261–5400, 1989.

Department of Social Services, 101 So. Shore Road, Northfield, NJ 08225. Holly Azchowski, (609) 645–7700, 1990.

Tri-County Youth Services, 435 Main Street, Paterson, NJ 07501. Gail Manning, (201) 881–0280, 1990.

Together, 7 State Street, Glassboro, NJ 08028. Susan Sasser, (609) 881–6100, 1991.

Tri-County Youth Services, 435 Main Street, Paterson, NJ 07501. Gail Manning, (201) 881–0280, 1991.

Youth Coordinating Council, 306 Brookline Avenue, Cherry Hill, NJ 08002. Eleanor Stofman, (609) 667–6525, 1991.

Somerset Youth Shelter, 49 Brahma Avenue, Bridgewater, NJ 08807. Jeffrey Fetzko, (201) 526–6605, 1991.

Ocean's Harbor House, 2445 Windsor Avenue, Toms River, NJ 08754. Albert Borris, (201) 929–0660, 1991.

New York

Project Equinox, 214 Lark Street, Albany, NY. Donna McIntosh, (518) 465–9524, 1989.

Compass House, 370 Linwood Avenue, Buffalo, NY 14209. Janell Wilson, (716) 886–1351, 1989.

Town of Huntington Youth Bureau, 100 Main Street, Huntington, NY 11743. Paul Lowery, (516) 351–3061, 1989.

YWCA of Binghamton/Broome County, 80 Hawley Street, Binghamton, NY 13901. Penny Smith, (607) 772–0340, 1989.

Westchester Children's Assoc., 470 Mamaroneck Avenue, White Plains, NY 10605. Eileen Moran, (914) 946–7676, 1989.

Under 21, 460 West 41st Street, New York, NY 10029. Eleanor Miller, (212) 354–4323, 1989.

Flowers With Care, 23–30 Astoria Boulevard, Astoria, NY 11102. Rev. James Harvey, (718) 726–9790, 1989.

Family of Woodstock, U.P.O. Box 3516, Kingston, NY 12401. Joan Mayer, (914) 679–9240, 1989.

Nassau County Youth Board, 1 West Street, Mineola, NY 11501. Ann Irvin, (516) 535–5893, 1989.

St. Agatha Home, 135 Convent Road, Nanuet, NY 10954. Mary Ellen Holtzman, (914) 623–3461, 1990.

Educational Alliance, 197 East Broadway, New York, NY 10002. Marion Lazer, (212) 475–6200, 1990.

Urban Strategies, 1542 East New York Avenue, Brooklyn, NY 11212. Glenda Taylor, (718) 346–7074, 1990.

Oneida County Community Action Agency, 303 West Liberty Street, Rome, NY 13440. Treva Wood, (315) 339–5640, 1990.

Enter, 252 East 112th Street, New York, NY 10029. Rudy Marchi, (212) 860–2460, 1990.

Family and Community Services, 41 West Main Street, Cobleskill, NY 12043. Marie Pracher, (518) 234–3581, 1990.

Dutchess County, 22 Market Street, Poughkeepsie, NY 12601. Folomi Gray, (914) 431–2021, 1991.

Center for Youth Services, 258 Alexander Street, Rochester, NY 14607. Roger Palma, (716) 473–2464, 1991.

Society for Seamen's Children, 26 Bay Street, Staten Island, NY 10301. Ann Deinhardt, (718) 447–7740, 1991.

Hillside Children's Center, 1183 Monroe Avenue, Rochester, NY 14620. Harry Lang, (716) 473–5150, 1991.

Project Safe, 5 Catherine Street, Schenectady, NY 12307. Rev. Phillip Grigsby, (518) 374–2683, 1991.

Puerto Rico

Dispensario San Antonio, Box 213, Playa Station, Ponce, PR 00734. Sister Rosita Bauza, (809) 843–1910, 1990.

Pueblo Del Nini, P.O. Box 788, Rio Grande, PR 00765. Elba Nazario, (809) 887–2225, 1990.

Office of Human Development, King's Court and Loiza Street, Santurce, PR 00914. Jesus Joel Perez, (809) 728–7474, 1990.

The Salvation Army, 1327 Americo Miranda Avenue, Caparra Terrace, PR 00619 Marjorie Yambo, (809) 781–6883, 1990.

Department of Social Services, Box 11398, Santurce, PR 00910. Carmen Sonia Zayas, (809) 722–7400, 1991.

Virgin Islands

Department of Human Services, Barbel Plaza South, Charlotte Amalie, VI 00801. Catherine Hills, (809) 774–4393, 1991.

REGION III

Delaware

Child, Inc., 11th and Washington Streets, Wilmington, DE 19801. Joseph Dell'Olio, (302) 655–3311, 1989.

Aid in Dover, 32 Lookerman Square, Dover, DE 19501. Beverly Williams, (302) 734–7610, 1991.

District of Columbia

Sasha Bruce Youthwork, 1022 Maryland Avenue, NE., Washington, DC 20002. Deborah Shore, (202) 546–6807, 1991.

Maryland

Southern Area Youth Services, P.O. Box 44408, Friendly, MD 20744. Thomas Merrick, (301) 292–3825, 1991.

Youth Resources Center, 7300 New Hampshire Avenue, Takoma Park, MD 20912. Ellen Freeman, (301) 779–1257, 1991.

Fellowship of Lights, Inc., 1300 North Calvert Street, Baltimore, MD 21202. Ross Pologe, (301) 837–8155, 1991.

Boys & Girls Home of Montgomery County, 9601 Colesville Road, Silver Spring, MD 20901. Quanah Parker, (301) 589–8444, 1991.

Pennsylvania

Voyage House, 1431 Lombard Street, Philadelphia, PA 19146. Francis Stoffa, (215) 545–2910, 1989.

Catholic Social Services, P.O. Box 3551, Harrisburg, PA. Very Rev. Francis Kumontis, (717) 652–3934, 1989.

Catholic, Social Services, 15 South Franklin Street, Wilkes-Barre, PA 18702. Thomas Cherry, (717) 824–5766, 1989.

Three Rivers Youth, 2039 Termon Avenue, Pittsburgh, PA 15212. Ruth Richardson, (412) 766–2215, 1989.

Alternatives Corporation, 360 King Street, Pottstown, PA 19464. Ronald Harris, (215) 327–1601, 1989.

Youth in Action, 7th and Morton Avenue, Chester, PA 19013. Tommie Lee Jones, (215) 874–1407, 1990.

Youth Emergency Service, 410 North 34th Street, Philadelphia, PA 19104. Theodore Levine, (215) 222–3262, 1990.

Council of Three Rivers Indian Center, 200 Charles Street, Pittsburgh, PA 15238. Mimi Wagner, (412) 782–4457, 1990.

Centre County Youth Service, 205 East Beaver Avenue, State College, PA 16801. Norma Keller, (814) 237–5731, 1991.

Valley Youth House Committee, 539 Eighth Avenue, Bethlehem, PA 18019. David Gilgoff, (215) 691–1200, 1991.

Whale's Tale, 5100 Centre Avenue, Pittsburgh, PA 15232. Christopher Smith, (412) 621–8407, 1991.

Tabor Children's Services, 601 New Britain Road, Doylestown, PA 18901. William Haussmann, (215) 348–4071, 1991.

Virginia

Family and Children's Services, 1518 Willow Lawn Drive, Richmond, VA 23230. Richard Lung, (804) 282–4255, 1989.

Volunteer Emergency Foster Care, 2317 Westwood Avenue, Suite 109, Richmond, VA 23230. William Christian, (804) 353–4698, 1989.

Alexandria Community Y, 418 South Washington Street, Alexandria, VA 22314. Craig Hutton, (703) 549–1111, 1989.

Mother Seton House, Inc., 642 North Lynnhaven Road, Virginia Beach, VA 23452. Susan Jones, (804) 498–4673, 1990.

Central Virginia Child Development Association, 310 East Market, Charlottesville, VA 22902. Betty Goodman, (804) 977–4260, 1990.

Alternative House, P.O. Box 637, McLean, VA 22101. Mark Hirschfeld, (703) 356–8355, 1991.

West Virginia

Daymark, 1583 Lee Street, East, Charleston, WV 25311. Amy Buckingham, (304) 344–3527, 1989.

Southwestern Community Council, 540 Fifth Street, Huntington, WV 25701. Joan Ross, (304) 525–5151, 1989.

REGION IV

Alabama

American Red Cross, 405 South First Street, Gadsden, AL 35901. Windell Jolley, (205) 547–9505, 1989.

Mobile Mental Health Center, 2400 Gordon Smith Drive, Mobile, AL 36617. T. Edmund Lakeman, (205) 473–4423, 1989.

Group Homes for Children, 880 South Lawrence, Montgomery, AL 36104. George Holy, (205) 834–5512, 1990.

Shelby Youth Services, P.O. Box 1261, Alabaster, AL 35007. Lindsey Allison, (205) 663–6301, 1991.

Florida

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733. Roy Miller, (813) 526–1123, 1989.

Youth Crisis Center, P.O. Box 16567, Jacksonville, FL 32245. Tom Patania, (904) 725–6662, 1989.

Youth and Family Alternatives, P.O. Box 1073, New Port Richey, FL 34291. Richard Hess, (813) 842–8060, 1989.

Youth Services Center, P.O. Box 625, Merritt Island, FL 32952. Roger McDonald, (305) 452–0801, 1990.

Youth Shelter of Southwest Florida, 2240 Broadway, Ft. Myers, FL 33901. Vernon Langford, (813) 337–1313, 1990.

Lutheran Ministries of Florida, 4015 S. Westshore Boulevard, Tampa, FL 33624. Ana Villan, (305) 467–0103, 1990.

Alternative Human Services, P.O. Box 13087, St. Petersburg, FL 33733. Roy Miller, (813) 526–1123, 1990.

Corner Drugstore, 1300 Northwest 6th Street, Gainsville, FL 32601. Karen Crapo, (904) 377–2976, 1991.

Someplace Else, 1315 Linda Ann Drive, Tallahassee, FL 32301. Diane Alexander, (904) 877–7993, 1991.

Switchboard of Miami, 35 S.W. 8th Street, Miami, FL 33130. Shirley Aron, (305) 358–1640, 1991.

Miami Bridge, 1149 N.W. 11th Street, Miami, FL 33136. Alice Davis, (305) 324–8953, 1991.

Orange County Board of Commissioners, 1718 East Michigan Avenue, Orlando, FL 32806. Larry Jones, (305) 420–3620, 1991.

Anchorage Children's Home, 707 North Cove Boulevard, Panama City, FL 32401. Barbara Cloud, (904) 7673–7102, 1991.

Georgia

Athens Regional Attention Home, 490 Pulaski Street, Athens, GA 30601. Martha Mendenhall, (404) 548–5893, 1989.

The Bridge, 75 Peachtree Place, NW., Atlanta, GA 30309. Kenneth Saunders, (404) 881–8344, 1989.

The Marshlands Foundation, 11 West Park Avenue, Savannah, GA 30401. Pat Peshoff, (404) 234–4048, 1989.

The Alcove, 507 East Church Street, Monroe, GA 30655. Gail Bayes, (404) 267–4571, 1990.

Kentucky

Brighton Center, P.O. Box 325, Newport, KY 41072. Kim Brooks, (606) 581–1111, 1989.

Lexington-Fayette County Government, 536 West Third Street, Lexington, KY 40508. Kathy Noel, (606) 254–2501, 1991.

YMCA of Greater Louisville, 1410 South First Street, Louisville, KY 40208. Elizabeth Triplett, (502) 637–6480, 1991.

Mississippi

Catholic Charities, P.O. Box 2248, Jackson, MS 39205. Gayle Watts, (601) 355–9639, 1990.

Mississippi Children's Home, 1801 N. West Street, Jackson, MS 39205. Christopher Cherney, (701) 255–7229, 1990.

North Carolina

The Relatives, 1000 East Boulevard, Charlotte, NC 28203. Jo Ann Greyer, (704) 377–0602, 1989.

Tuscarora Tribe, P.O. Box 1455, Pembroke, NC 28372. Chief Young Bear, (919) 521–8682, 1989.

Mountain Youth Resources, P.O. Box 2847, Cullowhee, NC 28723. Elizabeth Chambers, (704) 586–8958, 1989.

Cape Fear Substance Abuse/Crisis Line, 801 Princess Street, Wilmington, NC 28401. Carlene Jackson, (919) 343–0145, 1990.

Surry County Friends of Youth, P.O. Box 1626, Mount Airy, NC 27030. Selbert Wood, (919) 789–9064, 1990.

Youth Care, 211 S. Edgeworth Street, Greensboro, NC 27401. Charles Hodierne, (919) 378–9109, 1990.

Haven House, 401 E. Whitaker Mill Road, Raleigh, NC 27608. Michael Rieder, (919) 755–6368, 1991.

Catholic Social Services, 10 Cascade Avenue, Winston Salem, NC 27101. Rosemary Martin, (919) 727–0705, 1991.

South Carolina

Department of Youth Services, (Crossroads), 1122 Lady Street, Columbia, SC 29202. Trudi Trotti, (803) 758–0262, 1990.

Department of Youth Services (Hope House), 1122 Lady Street, Columbia, SC 29202. Trudi Trotti, (803) 758–0262, 1990.

Department of Youth Services, (Greenhouse), 1122 Lady Street, Columbia, SC 29202. Trudi Trotti, (803) 758–0262, 1990.

Tennessee

Oasis Center, P.O. Box 120655, Nashville, TN 37212. Della Hughes, (615) 329–8036, 1989.

The Family Link, 1207 Peabody, Memphis, TN 38174. William Myers, (901) 725–6911, 1990.

Child and Family Services, 114 Dameron Avenue, Knoxville, TN 37197. Larry Feezel, (615) 524–2689, 1990.

Hamilton County Government, 317 Oak Street, Chattanooga, TN 37403. Judi Byrd, (615) 757–2692, 1990.

REGION V

Illinois

Maryville Academy, 1150 North River Road, Des Plaines, IL 60016. Rev. John Smyth, (312) 824–6126, 1989.

McHenry County Youth Service, 14124 South Street, Woodstock, IL 60098. Tom Engle, (815) 338–7360, 1989.

Hoyleton Children's Home, 36 Loisel Village, East St. Louis, IL 62203. Lucky Hollander, (618) 398–0900, 1989.

Central Illinois Youth Service Bureau, 832 South Fourth Street, Springfield, IL 62703. Kaywin David, (217) 753–8300, 1989.

Home Sweet Home Mission, 300 Mission Drive, Bloomington, IL 61701. Darryl Eslinger, (309) 828–7356, 1989.

Boys' Club Association, 307 Walnut Street, Rockford, IL 61108. Lou Tangorra, (815) 964–0834, 1989.

Youth Attention Center, P.O. Box 31, Jacksonville, IL 62651. Jerome Noble, 1989.

Naperville Community Outreach, 113 E. Van Buren, Naperville, IL 60540. John Prior, (312) 961–2992, 1990.

Children's Home and Aid Society, 1819 South Neil, Champaign, IL 61820. Sharon Pierce, (217) 359–8815, 1991.

Youth Network Council, 506 South Wabash Avenue, Chicago, IL 60605. Cheryl Darling, (312) 226–1000, 1991.

LaSalle County Youth Service Bureau, 827 Columbus Street, Ottowa, IL 61350. Dave McClure, (815) 433–3953, 1991.

Transitional Living Programs, 3179 N. Broadway, Chicago, IL 60657. Patricia Berg, (312) 883–0025, 1991.

Travelers and Immigrants Aid, 327 S. LaSalle, Chicago, IL 60604. Laura Friedman, (312) 435–4500, 1991.

Aunt Martha's, 224 Blackhawk, Park Forest, IL 60466. Steven McCabe, (312) 747–2701, 1991.

Indiana

Indiana Juvenile Justice Task Force, 3050 North Meridian, Indianapolis, IN 46208. Ron Carpenter, (317) 926–6100, 1989.

Youth Service Bureau, 222 Lincolnway West, South Bend, IN 46628. Bonnie Strycker, (219) 284–9231, 1990.

Park Center, 909 E. State Boulevard, Fort Wayne, IN 46805. John Garner, (219) 424–7478, 1990.

Stopover, 445 N. Penn Street, Indianapolis, IN 46204. Carol D'Amora, (317) 635–9301, 1990.

Clark County Youth Shelter, 118 East Chestnut Street, Jeffersonville, IN 47130. Sherry Zachariah, (812) 284–5229, 1990.

Crisis Center, Inc., 215 N. Grand Boulevard, Gary, IN 46403. Shirley Caylor, (219) 980–4207, 1991.

Monroe County Youth Service Bureau, 1310 East Atwater Avenue, Bloomington, IN 47401. Roberta Wysong, (812) 333–3506, 1991.

Michigan

Comprehensive Youth Services (Macomb), Two Crocker Boulevard, Mt. Clemens, MI 48043. Joanne Schietaert, (313) 463–7079, 1989.

Link Crisis Intervention Center, 2002 South State Street, St. Joseph, MI 49085. Polly Learned, (616) 983–6351, 1989.

Bethany Christian Services, 6995 West 48th, Fremont, MI 49412. June Curran, 1989.

Comprehensive Youth Services (Harbor), Two Crocker Boulevard, Mt. Clemens, MI 48043. Joanne Schietaert, (313) 463–7079, 1990.

Catholic Family Services, 1819 Gull Road, Kalamazoo, MI 49001. John Hemmer, (616) 381–9800, 1990.

Cory Place, 812 N. Jefferson, Bay City, MI 48708. Mary Jo Tompkins, (517) 895–5563, 1990.

Saginaw County Youth Council, 1110 Howard Street, Saginaw, MI 48601. Ron Spess, (517) 752–5175, 1990.

Northeast Michigan Community Service Agency, 2373 Gordon Road, Alpena, MI 49707. Ron Spess, (517) 356–3474, 1990.

League of Catholic Women (Off The Streets), 120 Parsons Street, Detroit, MI 48201. David Suttner, (313) 831–1000, 1990.

Advisory Centers (The Bridge), 1115 Ball N.E., Grand Rapids, MI 49505. Douglas Ellis, (616) 458–7434, 1990.

Ozone House, 608 N. Main Street, Ann Arbor, MI 48104. Lisa Wolf, (313) 662–2265, 1990.

Every Woman's Place, 1706 Peck Street, Muskegon, MI 49442. Judith Hayner, (616) 726–4493, 1990.

The Sanctuary, 1222 South Washington, Royal Oak, MI 48067. Meri Pohutsky, (313), 547–2260, 1991.

Equal Ground, 398 Park Lane, Lansing, MI 48823. James Gorman, (517) 351–4000, 1991.

Minnesota

The Bridge, 2200 Emerson Avenue South, Minneapolis, MN 55405. Thomas Sawyer, (612) 377–8800, 1989.

St. Paul Youth Service Bureau, 421 West University Avenue, St. Paul, MN 55103. Raeone Buckman-Ellis, (612) 292–7191, 1989.

Evergreen House, 921 Minnesota Avenue, Bemidji, MN 56601. Julie Portesan, (218) 751–4332, 1990.

Red School House, 1089 Portland Avenue, St. Paul, MN 55104. John Whitecloud, (612) 227–4184, 1990.

Ohio

Huckleberry House, 1421 Hamlet Street, Columbus, OH 43201. Douglas McCoard, (614) 294–8097, 1989.

Safe Landing Youth Shelter, 680 E. Market Street, Akron, OH 44303. David Fair, (216) 376–4200, 1989.

Black Focus on the West Side, 4115 Bridge Avenue, Cleveland, OH 44113. Willie Griffin, (216) 631–7660, 1989.

Children's and Family Service, 21 Indiana Avenue, Youngstown, OH 44505. Gerald Janosik, (216) 782–5664, 1990.

Council on Rural Service Programs, 116 E. Third Street, Greenville, OH 45331. Shirley Hathaway, (513) 548–8002, 1990.

Center for Children and Youth Services, 42707 North Ridge Road, Elyria, OH 44035. John Ollerton, (216) 324–6113, 1990.

New LIfe Youth Services, 6128 Madison Road, Cincinnati, OH 45227. Debbie Latter, (513) 561–0100, 1991.

Free Medical Clinic, 12201 Euclid Avenue, Cleveland, OH 44106. Rebecca Devenanzio, (216) 421–2000, 1991.

Clermont County Community Services, 2291 Bauer Road, Batavia, OH 45103. Martha Undercoffer, (513) 732–7182, 1991.

Connecting Point, 3301 Collingwood Boulevard, Toledo, OH 43610. Carole Smith, (419) 243–6326, 1991.

Daybreak, 819 Wayne Avenue, Dayton, OH 45410. David Nehring, (513) 461–1000, 1991

Wisconsin

Briarpatch, 512 E. Washington Avenue, Madison, WI 53703. Steve Sperling, (608) 251–1126, 1989.

Counseling Center of Milwaukee, 1428 North Farwell Avenue, Milwaukee, WI 53202. David Cobb, (414) 271–2565, 1989.

Walker's Point Youth Center, 732 S. 21st Street, Milwaukee, WI 53204. Andre Olton, (414) 647–8200, 1991.

Innovative Youth Services, 1030 Washington Avenue, Racine, WI 53403. Jane Karas, (414) 637–9557, 1991.

Wisconsin Association for Runaway Services, 2318 E. Dayton Street, Madison, WI 53704. Patricia Balke, (608) 241–2649, 1991.

REGION VI

Arkansas

Youth Bridge, P.O. Box 668, Fayetteville, AR 72702. Michael Lee, (501) 632–4618, 1989.

Stepping Stone, Inc., 6501 W. 12th Street, Little Rock, AR 72204. Judy Kane, (501) 562–1809, 1991.
Consolidated Youth Services, 4220 Stadium Boulevard, Jonesboro, AR 72401. Bonnie Stevens, (501) 972–1110, 1991.

Louisiana

Tangipahoa Youth Service Bureau, 1826 River Road, Hammond, LA 70401. Jeanne Voorhees, (504) 345–1171, 1990.
Education Treatment Council, 146 Hodges Street, Lake Charles, LA 70601. Giles Gilliam, (318) 433–1062, 1990.
Mt. Zion Baptist Church, P.O. Box 102, Baton Rouge, LA 70802. Lil Veal, 1991.

New Mexico

New Day, Inc., 1816 Sigma Chi NE., Albuquerque, NM 87106. Jeff Burrows, (505) 247–9559, 1989.
Youth Development, Inc., 1710 Centro Familliar SW., Albuquerque, NM 87105. Augustine Baca, (505) 873–1604, 1990.
Jemez House, P.O. Box 178, Alcalde, NM 87511. Carl Boaz, (505) 852–4264, 1990.
Eight Northern Indian Council, P.O. Box 969, San Juan Pueblo, NM 87566. Mary Vallei, (505) 852–4265, 1991.
Youth Shelters and Family Services, P.O. Box 8135, Santa Fe, NM 87504. Betty Rangel, (505) 473–0240, 1991.

Oklahoma

Cherokee Nation Youth Shelter, P.O. Box 948, Tahlequah, OK 74464. Gwen Grayson, (918) 456–0671, 1989.
Kay County Youth Services, 415 W. Grand, Ponca City, OK 74601. Marcus Whitt, (405) 762–8341, 1989.
Youth Services of Tulsa, 1415 E. 8th Street, Tulsa, OK 74120. Janis Walker, (918) 582–0061, 1989.
Youth and Family Services, 2404 Sunset Drive, El Reno, OK 73036. Warren Wells, (405) 262–6555, 1989.
Northwest Family Services, 326 Seventh Street, Alva, OK 73717. John Jones, (405) 327–2900, 1989.
Youth Services for Stephens County, P.O. Box 1603, Duncan, OK 73534. John Herdt, (405) 255–8800, 1989.
Youth Services for Oklahoma County, 1219 Classen, Oklahoma City, OK 73106. Sharon Wiggins, (405) 235–7537, 1990.
Ft. Sill Apache Tribe, Rt. 2, Box 121, Apache, OK 73502. (405) 588–2298, 1990.
Bryan County Youth Services, 3700 University, Durant, OK 74702. Bryant Jones, (405) 924–6263, 1990.

Texas

Comal County Juvenile Resident, 1414 W San Antonio Street, New Braunfels, TX 78130. Nancy Ney, (512) 629–4329, 1989.
Houston Metropolitan Ministries, 2001 Huldy, Houston, TX 77006. Theodore Shorten, (713) 527–8218, 1989.
The Bridge Association (Spruce), 115 West Broadway, Fort Worth, TX 76104. Gary Metcalf, (817) 926–9184, 1989.
Youth Alternatives (The Bridge), 3103 West Avenue, San Antonio, TX 78213. Roy Maas, (512) 340–8077, 1989.
Tropical Texas Center for MH/MP, P.O. Drawer 1108, Edinburgh, TX 78539. Polly Adams, (512) 383–0121, 1989.
Youth Alternatives (Stepping Stone), 3103 West Avenue, San Antonio, TX 78213. Roy Maas (512) 340–8077, 1989.
Grayson County Juvenile Alternatives, 207 West Cherry, Sherman, TX 75090. Dave Farris, (214) 893–4717, 1990.
El Paso Center for Children, 3700, Altura, El Paso, TX 79930. Sandy Rioux, (915) 565–8361, 1990.
Association of Mexican Americans, 204 Clifton, Houston, TX 77011. Gloria Guardiola, (713) 926–9491, 1990.
The Children's Center, 2127 Avenue M, Galveston, TX. Donald Loving, (409) 765–5212, 1990.
YMCA of Dallas, 601 N. Akard Street, Dallas, TX 75201. Kathy Hamilton, (214) 954–0655, 1990.
Stop Child Abuse and Neglect, 518 Pappas, Laredo, TX 78041. Pat Davila, (512) 724–3177, 1990.
Central Texas Youth Services Bureau, 703 Parmer Street, Killeen, TX 76540. Robert Butts, (817) 634–2085, 1990.
Harris County Children's Services, 6425 Chimney Rock, Houston, TX 77081. Ann Hibbert, (713) 526–5701, 1990.
Montgomery County Youth Services, P.O. Box 1316, Conroe, TX 77305. Gretchen Faulkner, (409) 756–8682, 1990.
Middle Earth Unlimited, 3708–B South Second Street, Austin, TX 78704. Mitch Weynand, (512) 482–8322, 1991.
Lovers Lane, 9200 Inwood Road, Dallas, TX 75220. Charles Green, (214) 691–4721, 1991.
Sand Dollar, P.O. Box 840569, Houston, TX 77019. John Miller, (713) 529–3053, 1991.
Sabine Valley MHMR Center, P.O. Box 6800, Longview, TX 75608. Ron Cookston, (214) 297–2191, 1991.
Catholic Family Services, P.O. Box 15127, Amarillo, TX 79105. James Rogers, (806) 376–4571, 1991.
Carrollton Youth Advocacy, 3945 North Josey Lane, Carrollton, TX 75007. Bill Sigsbee, (817) 273–2084, 1991.
Collin Intervention, 1111 Avenue H, Plano, TX 75074. Kay Goodman, (214) 881–8010, 1991.
The Bridge Association, 115 West Broadway, Fort Worth, TX 76104. Jan Viles, (817) 877–1121, 1991
East Texas Open Door, 414 West Burleson Street, Marshall, TX 75670. William Power, (214) 938–1211, 1991.

REGION VII

Iowa

Youth and Shelter Services, 217 Eighth Street, Ames, IA 50010. George Belitsos, (515) 233–3141, 1989.
Youth Emergency Services and Shelter, 921 Pleasant Street, Des Moines, IA 50390. Susan Gehring, (515) 243–7825, 1989.
United Action for Youth, 311 N. Linn Street, Iowa City, IA 52240. Jim Swaim, (319) 338–7518, 1990.
Foundation II, 1251 Third Avenue SE., Cedar Rapids, IA 52403. Steve Meyer, (319) 362–2176, 1990.
Christian Home Association, North 6th and Avenue E, Council Bluffs, IA 51502. Andrew Ross, (712) 325–1910, 1991.

Kansas

Wyandotte House, 632 Tauromee, Kansas City, KS 66101. Wayne Sims, (913) 342–9332, 1989.
United Methodist Youthville, 900 W. Broadway, Newton, KS 67114. Shirley Dwyer, (316) 283–1950, 1990.
Wichita Children's Home, 810 N. Holyokes, Wichita, KS 67208. Sarah Robinson, (316) 684–6581, 1990.

Missouri

Asylum of St. Louis (Marian Hall), 325 N. Newstead, St. Louis, MO 63108. Patricia Bednara, (314) 531–0511, 1989.
Synergy House, P.O. Box 12181, Parkville, MO 64152. Jack McClure, (816) 741–8700, 1990.
Youth Emergency Service, 6816 Washington Avenue, University City, MO 63130. Linda James, (314) 862–1334, 1991.
The Front Door, 707 North Eighth Street, Columbia, MO 65201. Charles Servey, (314) 874–8686, 1991.
Youth in Need, 529 Jefferson, St. Charles, MO 63301. Liza Andrew-Miller, (314) 724–7171, 1991.

Nebraska

Youth Service System, 2202 South 11th Street, Lincoln, NE 68502. Mary Fran Flood, (402) 475–3040, 1989.
Youth Emergency Services, 1908 Hancock Street, Bellevue, NE 68005. Robert Knott, (308) 635–3089, 1990.
Panhandle Community Services, 3350 North 10th Street, Gering, NE 69341 Ruth Vance, (308) 635–3089, 1990.
Father Flanagan's Boys' Home, Boys Town Center, Boys Town, NE 68502. Karen Authier, (402) 475–3040, 1991.

REGION VIII

Colorado

Young Life (Dale House), 821 N. Cascade Avenue, Colorado Springs, CO 80903. George Sheffer III, (303) 471–0642, 1989.

Volunteers of America, 1865 Larimer Street, Denver, CO 80202. Dianna Kunz, (303) 297–0408, 1990.

Pueblo Youth Service Bureau, 612 West 10th Street, Pueblo, CO 81003. Molly Melendez, (303) 542–5161, 1990.

Mesa County Department of Social Services, Horizon House, 559 North 23rd Street, Grand Junction, CO 81502. Mark Neujahr, (303) 245–7962, 1990.

Ute Mountain Ute Nation, Sunrise Youth Shelter, General Delivery, Towaoc, CO 81334. Rita Arnett, (303) 565–3751, Ext. 213, 1990.

Let's Work It Out, 902 Taughenbaugh, #303, Rifle, CO 81650. Patti Phelps, (303) 625–3141, 1991.

Attention, Inc., P.O. Box 907, Boulder, CO 80306. Brie Timms, (303) 447–1206, 1991.

Gemini House, Inc. (Family Tree), 3805 Marshall Street, Suite 100, Wheatridge, CO 80033. Gail Penney, (303) 235–0630, 1991.

Denver Alternative Youth Service, 1240 W. Bayaud Avenue, Denver, CO 80223. Rhonda Cannon, (303) 698–2300, 1991.

Human Services, Inc., 838 Grant Street, Suite 400, Denver, CO 80203. Sally Butler, (303) 429–4440, 1991.

Comitis Crisis Center, 9840 E. 17th Street, Aurora, CO 80040. Richard Barnhill, (303) 341–9160, 1991.

Larimer County Shelter Care, 4432 Poco Drive, Fort Collins, CO 80525. Eri Busch, (303) 226–6984, 1991.

Montana

Mountain Plains Youth Services, 709 East Third, Anaconda, MT 59711. Linda Wood, (701) 255–7229, 1989.

Blackfeet Tribal Council, P.O. Box 1210, Browning, MT 59417. Violet Butterfly, (406) 338–5871, 1989.

Ft. Belknap Indian Community Council, P.O. Box 249, Harlem, MT 59526. John Contway, (406) 353–2205, 1989.

North Dakota

Mountain Plains Youth Services, 311 North Washington, Bismarck ND 58501. Linda Wood, (701) 255–7229, 1989.

South Dakota

Mountain Plains Youth Services, 1206 North Third Street, Aberdeen, SD 57401. Linda Wood, (701) 255–7229, 1989.

Rosebud Sioux Tribe, P O Box 430, Rosebud, SD 57570 Marilyn Gangone (605) 747–2381, 1990

Utah

Department of Social Services, 120 North 200 West, 4th Floor, Salt Lake City, UT 84110. Jean Nielson (801) 538–4100, 1990.

Wyoming

Mountain Plains Youth Services, 20 W. Works, Sheridan, WY 82801. Linda Wood, (701) 255–7220, 1989.

Attention Home, 1810 Van Lennen Avenue, Cheyenne, WY 82001. Jim Cosgrove, (307) 832–4740, 1989.

REGION IX

Arizona

Florence Crittenton Services, 4820 N. 7th Avenue, Phoenix, AZ 85013. Chris Rodencal, 1989.

Our Town Family Center, P.O. Box 26504, Tucson, AZ 85726. Dennis Moonan, 1989.

Center for Youth Resources, 915 N. Fifth Street, Phoenix, AZ 85004. Michael Garvey, (602) 271–9849, 1991.

The Navajo Nation, P.O. Box 1599, Window Rock, AZ 86515. Irving Toddy, (602) 871–6744, 1991.

Open-Inn, 4810 E. Broadway, Tucson, AZ 85771. Darlene Dankowski, (602) 323–0200, 1991.

California

Western Youth Services, 204 E. Amerige Avenue, Fullerton, CA 92632. Jeff Harris, (714) 525–5858, 1989.

Ocean Park, (Stepping Stone) 1833—18th Street, Santa Monica CA 90404. Amy Somers, (213) 450–7839, 1989.

Klein Bottle, 1235–B Veronica Spring Road, Santa Barbara, CA 93105. David Edelman, (805) 682–3850, 1989.

Diogenes Youth Services, (Yolo), 821 E. Ninth Street, Davis, CA 95616. Lynette Towers, (916) 443–6115, 1989.

YMCA of San Diego County, 7510 Clairemont Mesa Boulevard, San Diego, CA 92111. Beverly Digregorio, (619) 292–4037, 1989.

San Diego Youth Involvement, 626 South 28th Street, San Diego, CA 92113. Sandra Sandoval, (619) 234–1871, 1989.

Bill Wilson Counseling Center, 1000 Market Street, Santa Clara, CA 95050. Sparky Harlan, (408) 984–5955, 1989.

South Bay Community Services, 429 Third Avenue, Chula Vista, CA 92010. Kathryn Schroeder, (619) 420–3620, 1989.

Mendocino County Schools, 518 Low Gap Road, Ukiah, CA 95482, Jim Levine, (707) 463–4915, 1989.

Santa Cruz Community Center, 117 Union Street, Santa Cruz, CA 95060. Mary Sims, (408) 425–0771, 1989.

Tahoe Human Services, P.O. Box 848, South Lake Tahoe, CA. 95705, David Hampton, (916) 541 2445, 1989.

Casa de Bienvenidos, P.O. Box 216, Los Alamitos, CA 90720. Darwin Wagner, (213) 594–6825, 1989.

Diogenes Youth Services, (Sacramento) 1722 J Street, Sacramento, CA 95814. Lynette Towers, (916) 443–6115, 1989.

1736 Family Crisis Center, 1736 Monterey Boulevard, Hermosa Beach, CA 90254. Carol Adelkoff, (213) 372–4674, 1989.

Shasta County YMCA, 1752 Tehema Street, Redding, CA 96001. Phil Paulson, (916) 244–6226, 1990.

Turning Point, 12922 Seventh Street, Garden Grove, CA 92640. Edward Armstrong, (714) 638–8310, 1990.

Children's Home Society, 3200 Telegraph Avenue, Oakland, CA 94609. Pat Reynolds, (415) 655–7406, 1990.

Department of Social Services, 4455 E. Kings Canyon Road, Fresno, CA 93750. Robert Whittaker, (209) 453–6406, 1990.

Center for Human Services, 1700 McHenry Village Way, Modesto, CA 95350. Linda Kovacs, (209) 526–1440, 1990.

Sequoia YMCA, 609 Price Avenue, Redwood City, CA 94063. Richard Gordon, (415) 366–8408, 1990.

Community Human Services, P.O. Box 3076, Monterey, CA 93942. Jo Kenny, (408) 373–3641, 1990.

Hollywood Community Services, 1754 Taft Avenue, Hollywood, CA 90028. Dan Gumbleton, (213) 467–1932, 1990.

South County Alternatives, 7751 Monterey Street, Gilroy, CA 95020. Albert Valencia, (408) 842–3118 1990.

Youth Advocates, (Huckleberry House), 285—12th Avenue, San Francisco, CA 94118. Bruce Fisher, (415) 668–2622, 1991.

San Diego Youth and Community Services, 3878 Old Town Ave., Suite 200–B San Diego, CA 92110. Liz Shear, (619) 297–9310, 1991.

Travelers Aid Society, 646 S. Los Angeles Street, Los Angeles, CA 90014. Wayne Hinrichs, (213) 625–2501, 1991.

Youth Advocates, (Nine Grove Lane), 285—12th Avenue, San Francisco, CA 94118. Bruce Fisher, (415) 668–2622, 1991.

CSP South County Youth Shelter, 980 Catalina, Laguna Beach, CA 92651. Karen Cervenka, (714) 494–4311, 1991.

Santa Clara Social Advocates, 509 View Street Mountain View, CA 94041. Paul Schutz, (408) 253–3540, 1991.

Butte County Mental Health, 584 Rio Lindo Avenue, Chico, CA 95926. Alex Collins-Thomas, (916) 534–4211, 1991.

Individuals Now, 1303 College Avenue, Santa Rosa, CA 95404 Adam Jacobs, (707) 544–3299, 1991.

Los Angeles Youth Network, 6760 Franklin Place, Los Angeles, CA 90028. Gayle Sherman, (213) 466–6200, 1991.
Redwood Community Action Agency, 904 G Street, Eureka, CA 95501. Peter La Vallee, (707) 443–8322, 1991.
Interface Community, 1305 Del Norte Road, Camarillo, CA 93010. Charles Watson, (805) 485–6114, 1991.
Central City Hospitality House, 146 Leavenworth Street, San Francisco, CA 94102. Ann O'Halloran, (415) 776–2102, 1991.
Hamburger Home, 7357 Hollywood Boulevard, Los Angeles, CA 90046. Lois Tandy, (213) 876–0550, 1991.
Catholic Charities, 1400 W. 9th Street, Los Angeles, CA 90015. Bill White, (213) 251–3496, 1991.

Hawaii

Hawaii Youth Shelter Network, 2146 Damon Street, Honolulu, HI 96822. Sam Cox, (808) 946–3635, 1991.

Nevada

Community Runaway and Youth Service, 1135 Terminal Way, Reno, NV 89502. Carol Holliday, (702) 323–6296, 1991.
Western Counseling Association, 401 S. Highland Drive, Las Vegas, NV 89106. Richard Steinberg, (702) 385–2020, 1991.

Palau

Palau Community Action Agency, P.O. Box 3000, Koror, Republic of Palau 96940. Doroteo Nagata, 1990.

Guam

Sanctuary, P.O. Box 21020—GMF, Guam, MI 96921. Tony Champaco, (671) 734–2661, 1990.

CNMI

Commonwealth of the Marianas, Department of Community Cultural Affairs, Office of the Governor, Saipan, CM 96950. Margarita Olopai-Taitano, (670) 322–9366, 1991.

REGION X

Alaska

Fairbanks Native Association, 310 First Avenue, Fairbanks, AK 99701. Deborah King, (907) 452–5802, 1989.
Alaska Youth and Parent Foundation, 135 North Park, Anchorage, AK 99508. Sheila Gaddis, (907) 274–6541, 1989.
Juneau Youth Services, P.O. Box 32839, Juneau, AK 99803. Betty Jo Engelman, (907) 789–7610, 1991.

Idaho

Bannock Youth Foundation, P.O. Box 2072, Pocatello, ID 83206. Stephen Mead, (208) 234–2244, 1989.

Oregon

Youthworks, 1307 W. Main Street, Medford, OR 97501. Craig Christiansen, (503) 779–2393, 1989.
Northwest Human Services, 555—13th Street, Salem, OR 97301. Mary Beth Thompson, (503) 588–5828, 1990.
Janis Youth Program, 738 NE. Davis, Portland, OR 97232. Dennis Morrow, (503) 233–6090, 1991.
Looking Glass, 44 West Broadway Eugene, OR 97401. Galen Phipps, (503) 689–3111, 1991.

Washington

Youth and Community Services, 1545—12th Avenue, South Seattle, WA 98144. Victoria Wagner, (206) 322–7927, 1989.
Nisqually Indian Tribe, 4820 She-Nah-Num Drive, SE. Olympia, WA 98503. Joe Cushman, (206) 456–5221, 1989.
Sauk-Suiattle Indian Tribe, 5318 Chief Brown Lane, Darrington, WA 98241. Paulette Running Wolf, (206) 592–5176, 1989.
Thurston Youth Service Society, 112 East State Street. Olympia, WA. Barbara Branstetter, (206) 943–0780, 1990.
Auburn Youth Resources, 816 F Street, SE, Auburn, WA 98002. Richard Brugger, (206) 939–2202, 1990.
Pierce County Alliance, 1201 S. 11th Street, Tacoma, WA 98405. Terree Schmidt-Whelan, (206) 572–4750, 1990.
Friends of Youth, 2500 Lake Washington Blvd. North, Renton, WA 98056. J. Howard Finck, (206) 228–5775, 1991.
Northwest Youth Services, P.O. Box 1449, Bellingham, WA 98227. Mark Taylor (206) 734–9862, 1991.
Youth Help Association, West 1101 College #360, Spokane, WA 99201. Patt Earley, (509) 326–9553, 1991.
National Runaway Switchboard—1–800–621–4000, Metro-Help, Inc., 3080 N. Lincoln, Chicago, IL 60657. Beverly A. Edmonds, (312) 880–9860, 1991.

[FR Doc. 89–6489 Filed 3–20–89; 8:45 am]
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federal register

Tuesday
March 21, 1989

Part IV

Department of Justice

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim and Final Rules

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Property Destruction by Arson or Explosives

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its paroling policy guideline that refers to property destruction by arson or explosives. The change expands the types of crimes covered by that guideline to include fires which are not "arsons" but which involve a danger or potential danger to human lives. This change reflects the Commission's current practice of rating most prison fires under this guideline. The change makes it clear that a fire deliberately set in a prison is normally to be treated as equivalent in seriousness as an arson, even though the legal definition of "arson" may not be met in every case.

EFFECTIVE DATE: March 21, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Preston, Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. Telephone: (301) 492–5959.

SUPPLEMENTARY INFORMATION: The United States Parole Commission published a notice of proposed rule making on the proposed change in the arson or explosives guidelines in the **Federal Register** on November 15, 1988 [53 FR 45950]. One comment from an inmate was received. That comment generally supported the change in the guidelines but expressed some reservations about whether the sanction should be applied to mentally incompetent persons and whether designated hearing officers at Bureau of Prisons disciplinary hearings rely too heavily on unidentified informants. Both of these reservations have no specific bearing upon the actual changes in the regulation and reflect concerns relating to all prison disciplinary actions.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

Adoption of the Amendment

Accordingly, the Commission amends Part 2 of 28 CFR as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.20, Guidelines for Decisionmaking, Chapter Three, Subchapter A, Paragraph 301, is amended to substitute the word "fire" for the word "arson" in the heading of paragraph 301. This heading is revised to read as follows:

CHAPTER THREE—OFFENSES INVOLVING PROPERTY

Subchapter A—Arson and Other Property Destruction Offenses

301 Property Destruction by Fire or Explosives

Date: March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commmission.

[FR Doc. 89–6570 Filed 3–20–89; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Authorizing Home Detention As An Alternative to Incarceration

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adopting an interpretative regulation to codify in its rules new statutory authority granted by the Anti-Drug Abuse Act of 1988 to impose home detention as a condition of federal parole. That Act grants to the Commission the authority to require as a condition of parole that a parolee "remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices."

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Sharon A. Gervasoni, Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: The United States Parole Commission, the Federal Probation Service and the U.S. Bureau of Prisons, are currently experimenting with home detention as an alternative to halfway house placement.

Under this program, selected low-need offenders will be released directly to the community, ordinarily up to six months prior to the previously scheduled release date. During this period, offenders will abide by a curfew monitored through electronic surveillance. This is a useful option for those individuals who do not need the services that a half-way house would provide. Home detention frees half-way house space for inmates who need such services, while not requiring individuals who already have residence and suitable employment to reside at a half-way house.

This program could potentially provide the same transition period between institutionalization and freedom in the community for low-need parolees at a much lower cost without jeopardizing public protection. Indeed, public protection will be enhanced as compared with halfway house placement.

The Parole Commission, the Probation Service, and the Bureau of Prisons have been experimenting with home detention programs for offenders who volunteer for such release, for approximately the past year. The Commission will soon be evaluating the success of these experimental programs. This research should provide a solid basis for the expanded use of home detention in the future.

To provide a statutory basis for this type of correctional program, section 7305 of the Anti-Drug Abuse Act of 1988 amended 18 U.S.C. 4209(c) to provide that the Commission may, as a condition of release, require "a parolee to remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration." The Commission interprets halfway house placement to be included under the term "incarceration." The Commission also interprets this statute to permit home detention as a sanction for violations of parole that would otherwise warrant a return of the parolee to prison.

This rule change will codify this authority in the Commission's regulations. The rule restates the statutorily granted authority, and is thus an interpretative rule not requiring

notice and public comment. See 5 U.S.C. 553(b)(A).

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and Parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.40-[Amended]

2. The subparagraphs of § 2.40 are redesignated as follows: paragraphs (e) through (i) become (f) through (j). In addition, the present reference to "§ 2.40(e)" in redesignated § 2.40(g) is changed to reference "§ 2.40(f)".

3. 28 CFR 2.40 is amended to add the following new paragraph (e):

* * * * *

(e) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this section may be imposed only as an alternative to incarceration.

Issued at Chevy Chase, Maryland, March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-6572 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Mandatory Revocation for Possession of a Controlled Substance

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: In compliance with the Anti-Drug Abuse Act of 1988, the Commission is adopting a regulation stating that a parolee who is released after December 31, 1988, is subject to mandatory revocation of his parole if he is found to have been in possession of a controlled substance. This regulation will serve the purpose of alerting prisoners and parolees to the new provision of law, and will place them on notice that possession of a controlled substance is a parole violation for which revocation is the legally mandated sanction.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Gervasoni, Staff Attorney, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: Section 7303(c) of the Anti-Drug Abuse Act of 1988 requires the U.S. Parole Commission to revoke the parole of a parolee or mandatory releasee who is found by the Commission to have been in possession of any controlled substance. This new mandatory parole violation penalty applies only to persons placed on parole or mandatory release after December 31, 1988. It does not require revocation of parole, however, until the Commission has completed the normal hearing procedure required by 18 U.S.C. 4214 (1976), and has found, by a preponderance of the evidence, that the parolee possessed a controlled substance in violation of his or her parole.

The Commission's interpretation of this law, based upon the legislative history, is that it does not apply the penalty of mandatory revocation to evidence of drug usage. It applies only to persons from whom a controlled substance has been seized, or when the evidence presented to the Commission shows that the individual distributed a controlled substance, or held possession of a controlled substance in an amount greater, or for a longer period of time, than strictly necessary for immediate personal use.

If the Commission finds such possession, the law requires the Commission to enter an order revoking the individual's parole or mandatory release. However, the Commission retains the full discretion given to it by 18 U.S.C. 4214 to return the individual to prison, or to select some other, more appropriate, sanction for the parole violation. This may include reinstatement to parole supervision in an appropriate case.

The Commission does not expect that the implementation of this law will result in more severe punishments for those who violate their paroles by possessing controlled substances, because such behavior is already considered by the Commission to be a serious violation of parole warranting revocation. It will also not change the Commission's policies toward drug usage; the new law conveys no intent that evidence of drug usage not be a basis for revocation and return to prison in an appropriate case.

The new law and the regulation herein promulgated do, however, serve the purpose of placing parolees and mandatory releasees on clear notice that possession of a controlled substance will be consistently treated as a serious violation of parole warranting revocation.

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.40 is amended to add the following new paragraph (k):

* * * * *

(k) A parolee or mandatory releasee who is released after December 31, 1988, and who is found by the Commission, after a revocation hearing conducted pursuant to these rules, to have been in possession of a controlled substance while on parole, shall have his or her parole revoked.

Date: March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-6569 Filed 3-20-89; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Placing a Parole Violator Warrant as a Detainer

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its rule at 28 CFR 2.44(b) to provide explicitly that the Commission has the option of issuing a parole violator warrant and placing it as a detainer against a parolee who is in custody on new criminal charges, but who has not been convicted of a new offense committed while on parole. This interpretative rule is issued in response to several judicial decisions which have questioned the authority for this long-

standing practice of the Commission. It is also designed to clarify the basis for the agency's determination that it may properly exercise such authority.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: In recent years, several courts of appeals have questioned the Parole Commission's authority to place a violator warrant as a detainer against a parolee who is in jail awaiting trial on a new criminal offense. *E.g., Heath v. U.S. Parole Commission*, 788 F.2d 65 (2d Cir. 1986). The Court of Appeals for the Eleventh Circuit has held that the Commission is authorized to place a violator warrant as a detainer against a pre-trial detainee. *Goodman v. Keohane*, 663 F.2d 1044 (11th Cir. 1981). The courts disfavoring the Commission's practice have pointed out that 18 U.S.C. 4214(b)(1) only gives the Commission the power to place a detainer against a parolee after his conviction and incarceration for a new offense committed while on parole, and read into that statute an implicit prohibition on placing a violator warrant as a pre-trial detainer. Under the analysis of these courts, the Commission may only issue the warrant and promptly arrest the parolee, or withhold issuance of the warrant pending disposition of the new criminal charge. See U.S.C. 4213(b). Up to now, the Commission's regulations have not explicitly provided that the Commission may place its warrant as a detainer against a parolee in pre-trial custody; the rule at 28 CFR 2.44(b) only stated that issuance of the warrant may be withheld, or the warrant may be issued and "held in abeyance".

However, the Commission's long-standing practice in the disposition of violator warrants has included issuing a warrant and placing a detainer against a parolee in pre-trial custody. It allows the parolee the opportunity to proceed with his criminal trial without having to simultaneously defend himself against the alleged parole violations. But it also permits the Commission to promptly arrest the parolee and initiate revocation proceedings if the parolee is released pending trial. It is primarily used when the parolee is considered a threat to the public safety (thereby warranting his continued detention), and when the approaching expiration of the parolee's sentence requires the Commission to issue the warrant to retain its jurisdiction to conduct a revocation hearing. See 28 CFR 2.44(d). In these cases, other procedures such as issuance of a summons, or issuance of a warrant and having the U.S. Marshal hold the warrant "in abeyance" are not appropriate.

If the Commission were prohibited from using this practice, it would have to immediately arrest every parolee whose trial was scheduled to extend beyond his full term date, and promptly conduct a revocation hearing, thereby requiring the parolee to simultaneously defend himself against new criminal charges and parole violation charges. This would be an anomaly, for in a case where the parolee had a substantial period to serve until his sentence expired, the Commission would be able to await the conclusion of the trial and then issue the warrant and have it placed as a detainer. It could postpone the revocation proceeding for the duration of any new sentence imposed. *Moody v. Daggett*, 429 U.S. 78 (1976). Congress never intended that the Commission pursue a different course for a parolee nearing the end of his sentence, and be obliged to make a revocation decision before the facts of a new criminal charge can be adjudicated in court, or else lose jurisdiction over such a parolee.

The Commission's practice is described in several cases approving the former U.S. Board of Parole's authority to postpone a revocation hearing until a criminal prosecution has been completed. *Savage v. U.S. Parole Board*, 422 F.2d 1248 (6th Cir. 1970); *Shelton v. U.S. Board of Parole*, 388 F.2d 567 (DC. Cir. 1967); *Watson v. Neff*, 383 F.2d 397 (5th Cir. 1967). This procedure was used under the authority of a statute—former 18 U.S.C. 4205—which in pertinent part, provided only that "[a] warrant for the retaking of any United States prisoner who has violated his parole, may be issued only by the Board of Parole or a member thereof and within the maximum term or terms for which he was sentenced."

In enacting the Parole Commission and Reorganization Act of 1976, Congress evidenced no dissatisfaction with the Commission's practice, and did not require that a warrant issued under section 4213 be immediately executed. In the absence of an express disapproval from Congress, Section 4213 should be read to permit the Commission to place a violator warrant as a pre-trial detainer. At section 4214(b)(1), Congress gave the Commission explicit authority to issue a warrant and place it as a detainer against a parolee convicted of a new offense, because at the time (1976), that was the subject of controversy, not pre-trial detainers. As noted by the Supreme Court in *Moody v. Daggett, supra*, 82–5 (1976), Congress, in passing section 4214(b)(1), simply adopted as statutory law one of the regulations of the former Board of Parole (28 CFR 2.53 (1975)). Therefore, section 4214(b)(1) should not be interpreted as an implicit restriction on the Commission's authority in the disposition of its violator warrants.

Consequently, the Commission is amending its regulation at 28 CFR 2.44(b) in order to provide explicit regulatory authority for its long-standing practice. Because this rule represents the Commission's interpretation of its authority in the disposition of parole violator warrants issued under 18 U.S.C. 4213 and represents no change in the Commission's prior policies or practices, the Commission has not sought public comment on the change.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

PART 2—[AMENDED]

Section 2.44 is amended by revising paragraph (b) to read as follows:

§ 2.44 Summons to appear or warrant for retaking of parolee.

* * * * *

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense and awaiting disposition of the charge, issuance of a summons or warrant may be withheld, a warrant may be issued and held in abeyance, or a warrant may be issued and a detainer may be placed.

* * * * *

Date: March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–6571 Filed 3–20–89; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommittting and Supervising Federal Prisoners; Special Parole Term Violators

AGENCY: United States Parole Commission.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adopting an interpretative regulation that clarifies the consequences of parole revocation in the case of a special parole term violator. The regulation states that, if parole is revoked, none of the time spent on parole shall be credited toward the special parole term violator's sentence. The need for this regulation is to distinguish special parole term violators from ordinary parole violators, who do not lose credit for time spent on parole unless they have absconded from supervision, or have sustained a new conviction punishable by jail or prison.

EFFECTIVE DATE: April 20, 1989.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland, Telephone (302) 492–5959.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission's present regulation concerning the consequences of parole revocation with respect to credit for time spent on parole, 28 CFR 2.52(c), addresses the case of ordinary parolees, who do not lose time spent on parole except under the circumstances specified at 18 U.S.C. 4210 (1976). The regulation does not cover the case of special parole term violators. These individuals continue to be subject to the terms of 21 U.S.C. 841(c), which states that the special parole term becomes a term of imprisonment once it is revoked, and that none of the time spent on parole shall be credited toward that prison term.

Although 21 U.S.C. 841(c) has been repealed in the Comprehensive Crime Control Act of 1984, the penalties provided in that statute were not abated by the repeal. See 1 U.S.C. 109, the General Savings Statute. Hence, special parole terms remain in effect, and the automatic forfeiture of street time required by section 841(c) must be applied to any special parolee whose parole is revoked.

In some instances, the Commission has erroneously permitted special parole term violators to receive credit for time spent on parole, by erroneous application of 28 CFR 2.52(c). The Commission intends to reopen these cases whenever they appear before the Commission for review, and to enter the deduction of credit for time spent on parole required by 21 U.S.C. 841(c) and the interpretative regulation herein promulgated.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Probation and parole, Prisoners.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.57(c) is amended to add the following sentence at the end:

* * * * *

(c) * * * Notwithstanding the provisions of § 2.52(c), a special parole term violator whose parole is revoked shall receive no credit for time spent on parole pursuant to 21 U.S.C. 841(c).

Dated: March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89–6568 Filed 3–20–89; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Interim Procedures for Conducting Special Transferee Hearings for Inmates Transferred by Treaty Who Committed Their Offenses on or After November 1, 1987

AGENCY: United States Parole Commission.

ACTION: Interim rule.

SUMMARY: The Parole Commission is publishing an interim rule establishing a procedure for conducting hearings for prisoners who are transferred to the United States pursuant to a treaty, and who have been convicted in foreign countries of offenses committed after November 1, 1987. The purpose of this interim rule is to implement the provisions of the Anti-Drug Abuse Act of 1988 requiring the Parole Commission to determine release dates for these prisoners as though the prisoner had been convicted in a United States District Court pursuant to 18 U.S.C. 4106A. The Commission is, at the same time, requesting public comment on the procedure set forth in the interim rule.

DATES: Effective March 21, 1989; comments must be received by May 22, 1989.

ADDRESS: Comments should be sent to Office of the General Counsel, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, Attn: Richard Preston.

FOR FURTHER INFORMATION CONTACT: Richard Preston at (301) 492–5959.

SUPPLEMENTARY INFORMATION: The Parole Commission has jurisdiction over all prisoners and parolees who are transferred from foreign countries pursuant to treaty. Prior to the Sentencing Reform Act of 1984, the Parole Commission had authority, under 18 U.S.C. 4106, to make parole release decisions for all prisoners, and to supervise all parolees, transferred to the United States. 18 U.S.C. 4100–4115 (originally enacted October 28, 1977). The Sentencing Reform Act of 1984 removed all references to the Parole Commission in 18 U.S.C. 4106 and amended that provision to make all transferees subject to the sentencing guidelines after November 1, 1987.

The 1984 amendment section 4106 left two important questions unanswered. First, it failed to make it clear whether the changes would apply to prisoners who committed their offenses prior to November 1, 1987 but were not transferred to U.S. jurisdiction until on or after November 1, 1987. Second, it failed to indicate which agency would determine the sentencing guidelines for the transferees.

The Sentencing Act of 1987 settled the first issue by stating that the old version of section 4106 would apply to all transferees who committed their offenses prior to November 1, 1987, regardless of when they were eventually transferred. The 1987 Act required the Parole Commission to determine parole release dates for all transferees who committed their offenses before November 1, 1987. The Anti-Drug Abuse Act of 1988 resolved the second question by creating a supplemental provision, 18 U.S.C. 4106A, which requires the Parole Commission to determine release dates for transferees who committed their offense after November 1, 1987. It requires the Parole Commission to apply the applicable sentencing guidelines "as though the offender were convicted in a United States District Court of a similar offense". 18 U.S.C. 4106A(b)(1)(A). It also permits an appeal of the Commission's decision to a U.S. Court of Appeals. The procedures published below are in response to the new

obligations of the Commission required by the 1988 legislation.

The Parole Commission interprets the 1988 legislation as authorizing the Commission to determine release dates for transferred prisoners who committed their offenses after November 1, 1987, by way of procedures similar to those that have been used to determine release dates for parole eligible prisoners. The procedures published below, however, grant more procedural rights to a transferred prisoner who committed his offense after November 1, 1987, than are available to parole eligible prisoners. These procedures satisfy three objectives: (1) The need to produce a record that is similar to the record presented to a U.S. Court of Appeals from a U.S. District Court sentencing guideline determination, (2) the need to have as many issues as possible resolved or put in focus prior to the hearing, and (3) the need to give the prisoner similar procedural rights he would have in a sentencing proceeding without departing from the Commission's traditional reliance upon hearing examiners to make a recommended decision.

The Parole Commission interprets the 1988 legislation as requiring Parole Commissioners to make the release decision, but permitting its hearing examiners to conduct the special transferee hearings. In the Commission's view, Congress was aware of, and implicitly contemplated the use of, the Commission's existing statutory procedures for setting release dates for offenders with parolable offenses. These permit delegation of authority to hearing examiners to conduct hearings and to receive evidence. 18 U.S.C. 4203(c) (1976).

The interim regulation set forth below establishes a procedure whereby the Commission can immediately implement the 1988 legislation and determine release dates for those transferees who are already in the system. The Commission may modify this procedure at a later date if experience and practicality dictate that a modification be made. The Commission welcomes public comment on the interim procedure and will consider all timely received comment prior to promulgating a final rule.

This interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

PART 2—[AMENDED]

28 CFR Part 2 is amended to add § 2.62 follows:

§ 2.62 Prisoners transferred pursuant to treaty.

(a) *Applicability and jurisdiction.* Prisoners transferred by treaty who committed their offenses on or after November 1, 1987 shall receive a special transferee hearing pursuant to the procedures found in this section and 18 U.S.C. 4106(A) as amended by the Anti-Drug Abuse Act of 1988. Prisoners transferred by treaty who committed their offenses prior to November 1, 1987, are immediately eligible for parole and shall receive a parole hearing pursuant to procedures found at 28 CFR 2.13. The Commission's jurisdiction in either case is the limit of the sentence imposed by the foreign court, and the Commission shall treat the foreign conviction as though it were a lawful conviction in a United States District Court.

(b) *Interview upon entry.* Following the transferee's entry into the United States, the transferee shall, without unnecessary delay, be interviewed by a United States Probation Officer and informed of his rights under this regulation. The transferee shall be given the appropriate forms for appointment of counsel at the interview if appointment of counsel is requested.

(c) *Presentence report.* A presentence investigation report, which shall include an estimated sentencing classification and sentencing guideline range, shall be prepared by the probation office in the district of entry (or the transferee's home district). Disclosure of the presentence report shall be made as soon as the report is completed, by delivery of a copy of the report to the transferee and his counsel (if any). Confidential material contained in the presentence investigation report may be withheld pursuant to the procedure of 18 U.S.C. 4208(c). Following disclosure of the presentence report, the Commission shall review the report and may request that a corrected report be submitted. The transferee (or counsel) may submit a request for correction of the presentence report to the probation office within ten calendar days of receiving the report.

(d) *Special transferee hearing.* Following the submission of a presentence report and the completion of any corrections to that report, the Parole Commission shall conduct a special transferee hearing. A special transferee hearing shall be conducted within 60 days from the transferee's entry into the United States, or as soon as practicable following completion of the presentence investigation report and appointment of counsel for an indigent transferee.

(e) *Representation.* The transferee shall have the opportunity to be represented by counsel (retained by the transferee or, if financially unable to retain counsel, counsel shall be provided pursuant to 18 U.S.C. 3006(A)), at all stages of the proceeding set forth in this section. The transferee may select a non-lawyer representative as provided in 28 CFR 2.61.

(f) *Decisionmaking criteria.* The Commission shall apply the guidelines promulgated by the United States Sentencing Commission, as though the transferee were convicted in a United States District Court of a statutory offense most nearly similar to the offense of which the transferee was convicted in the foreign court.

(g) *Hearing procedures.* Special transferee hearings shall be conducted by a panel of examiners. Each special transferee hearing shall be recorded by a certified court reporter and the proceedings shall be transcribed if the determination of the Commission is appealed. The following procedures shall apply at a special transferee proceeding, unless waived by the transferee.

(1) The examiner panel shall inquire whether the transferee and his counsel have had an opportunity to read and discuss the presentence investigation report and whether the transferee is prepared to go forward with the hearing. If not, the transferee shall be given the opportunity to continue the hearing.

(2) The transferee shall have an opportunity to present documentary evidence and to testify on his own behalf.

(3) Oral testimony of interested parties may be taken with prior advance permission of the Regional Commissioner.

(4) The transferee and his counsel shall be afforded the opportunity to comment upon the guideline estimate contained in the presentence investigation report, and to present arguments and information relating to the Commission's determination.

(5) Disputes of material fact shall be resolved by a preponderance of the evidence, with written recommended findings by the panel unless the panel determines, on the record, not to take the controverted matter into account.

(6) The transferee shall be notified of the panel's recommended findings of fact, and its recommended determination and reasons therefore, at the conclusion of the hearing.

(h) *Final decision.* The Commission shall render a decision as soon as practicable and without unnecessary delay. The decision shall set a release date and a period and conditions of supervised release. The Commission may, in its discretion, defer a decision, and order a hearing, provided that a statement of the reason(s) for ordering a rehearing is issued to the transferee and his counsel (if any). The Commission's final decision shall be supported by a statement of reasons explaining:

(1) The similar offense selected as the basis for the Commission's decision;

(2) The basis for the guidelines range applied;

(3) The reason for making a release determination at a particular point within the range (if the range exceeds twenty-four months); or

(4) The special reason for departing from the range. The Commission shall also provide a written statement setting forth the conditions of any period of supervised release imposed.

(i) *Appeal.* The transferee shall be advised of his right to appeal the decision of the Commission to the United States Court of Appeals that has jurisdiction over the district in which the transferee is confined.

Dated: March 3, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 89-6573 Filed 3-20-89; 8:45 am]

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