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Friday
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# federal register

Friday
May 5, 1989

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

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**WHO:** The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** May 23; at 9:00 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
**RESERVATIONS:** 202–523–5240

### ST. LOUIS, MO

**WHEN:** May 23; at 9:00 a.m.
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# Presidential Documents

Title 3—

The President

**Proclamation 5967 of May 2, 1989**

## National Maritime Day, 1989

**By the President of the United States of America**

**A Proclamation**

In the pages of our Nation's history, merchant seafarers rightly occupy an honored place. The American merchant marine has not only made important contributions to our economic development, but has also helped our country make effective responses to military challenges.

The value of merchant craft in wartime operations was first demonstrated during the Revolution, when they supplemented the 34 ships of the small Continental Navy. These vessels wrought havoc on enemy shipping, capturing or sinking some 600 British merchant vessels. Those losses intensified the mounting pressure on Parliament to end the war.

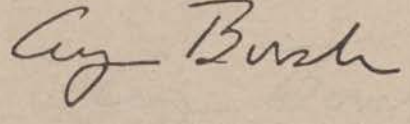
In this century, their support has been crucial—and their sacrifices heroic—in many armed conflicts. During World War II alone, despite enemy attacks which sank more than 700 U.S.-flag merchant ships and claimed the lives of more than 6,000 civilian seafarers, they transported the troops and kept open the supply lines that led ultimately to victory.

Clearly we owe our valiant merchant mariners an enormous debt of gratitude. Last year I joined millions of Americans in welcoming the news that these seafarers had finally received the official recognition they deserve as veterans of war.

In recognition of the importance of the U.S. merchant marine, the Congress, by joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day" and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance. This date was chosen to commemorate the day in 1819 when the SS SAVANNAH left Savannah, Georgia, on the first transatlantic steamship voyage.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 22, 1989, as National Maritime Day. I urge the people of the United States to observe this day by displaying the flag of the United States at their homes and other suitable places, and I request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, 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. 89-11019
Filed 5-3-89; 4:33 pm]
Billing code 3195-01-M

# Presidential Documents

**Proclamation 5968 of May 2, 1989**

## Fire Prevention Week, 1989

**By the President of the United States of America**

**A Proclamation**

During the past year, fire claimed the lives of almost 6,000 of our fellow citizens. Many thousands more were severely injured by fire, and billions of dollars of property was destroyed. Eighty-five percent of the deaths caused by fire last year occurred in residential properties. Fire is especially devastating to the most vulnerable members of our society: children and the elderly.

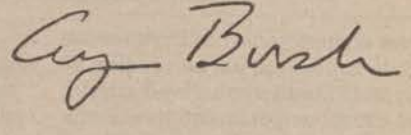
This year, the United States Fire Administration has launched a campaign aimed at the very young entitled "Curious Kids Set Fires." The National Fire Protection Association, the originator of Fire Prevention Week, has selected a companion theme: "Big Fires Start Small: Keep matches and lighters in the right hands." Complementing these efforts is a private sector initiative, "Plan to Get Out Alive," a house escape planning program developed with the assistance of the U.S. Fire Administration. All of these programs are designed to make the American public more aware of the dangers of fire in their homes.

I commend the efforts of public officials, firefighters, business leaders, and community and volunteer organizations who are working together to bring about a safer America. I especially commend the men and women of the American fire service—volunteer and career—who risk injury and death to protect the lives and property of their fellow citizens.

The great risks and sacrifices involved in their work are clearly evidenced each year during the National Fallen Firefighters Memorial Services at the National Fire Academy in Emmitsburg, Maryland. On October 15 of this year, the families of firefighters killed in the line of duty and representatives of the Nation's fire service will gather from all over America to honor and pray for the 126 heroic individuals who perished in 1988.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 8, 1989, as Fire Prevention Week. I call upon the people of the United States to plan and actively participate in fire prevention activities not only this week, but throughout the year. I also ask all Americans to pay tribute to those firefighters who have made the ultimate sacrifice for our safety.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, 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. 89-11020
Filed 5-3-89; 4:34 pm]
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# Rules and Regulations

Federal Register
Vol. 54, No. 86
Friday, May 5, 1989

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Regulation 664]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 664 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 385,000 cartons during the period May 7 through May 13, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** Regulation 664 (§ 910.964) is effective for the period May 7 through May 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

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

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

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy of 1988–89. The Committee met publicly on May 2, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

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

**List of Subjects in 7 CFR Part 910**

Marketing agreements and orders, California, Arizona, Lemons.

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

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.964 is added to read as follows:

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

**§ 910.964 Lemon Regulation 664.**

The quantity of lemons grown in California and Arizona which may be handled during the period May 7, 1989, through May 13, 1989, is established at 385,000 cartons.

Dated: May 3, 1989.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–10970 Filed 5–4–89; 8:45 am]
BILLING CODE 3410–02–M

### 7 CFR Part 955

[Docket No. FV–89–037]

### Expenses and Assessment Rate for Marketing Order No. 955

**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 authorized expenditures and established an assessment rate under interim Marketing Order 955 for the

fiscal period ending September 15, 1989. Authorization of this budget will allow the Vidalia Onion Committee to incur expenses reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** March 16, 1989 through September 15, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Tentative Marketing Agreement No. 955 and Interim Marketing Order No. 955 (7 CFR Part 955) applicable to Vidalia onions grown in a designated part of southeastern Georgia. The marketing 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 final rule on small entities.

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

There are approximately 160 handlers and 260 producers of Vidalia onions in that portion of Georgia covered by the interim order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the Georgia Vidalia handlers and producers may be classified as small entities.

The budget of expenses for the 1989 season was prepared by the Vidalia Onion Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Vidalia onions. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. The marketing order became effective March 16, 1989 on an interim basis for the 1989 season. The initial budget will cover the period through September 15, 1989, as the subsequent fiscal period begins on September 16, 1989.

The Vidalia Onion Committee met on March 27, 1989, and unanimously recommended an initial 1989 budget of $150,000. The committee also recommended an assessment rate of $0.10 per 50-pound bag. This rate, when applied to anticipated shipments of 1.5 million 50-pound bags, would yield $150,000 in assessment revenue which would be adequate to cover budgeted expenses. Major expense items include the committee manager's salary, promotion activities and a contingency reserve.

An interim final rule was issued March 31, 1989, and published in the Federal Register on April 5, 1989 (54 FR 13666). The rule authorized the budget of expenses and established the assessment rate recommended by the committee. The interim rule provided that interested persons could file written comments through April 17, 1989. No comments were received.

While this 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 offset by the benefits derived from the operation of the interim 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.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee, it is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses. The committee's initial fiscal period began March 16, 1989, and the interim order requires that the rate of assessment for the fiscal period apply to all assessable Vidalia onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 533).

**List of Subjects in 7 CFR Part 955**

Marketing agreements and orders, Vidalia onions (Georgia).

For the reasons set forth in the preamble, the interim final rule amending 7 CFR Part 955 which was published at 54 FR 13666 on April 5, 1989 is adopted as a final rule without change.

Dated: May 2, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–10849 Filed 5–4–89; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 989**

**[Docket No. FV–89–018FR]**

## Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for the 1988–89 Crop Year for the Natural (Sun-Dried) Seedless Raisin Varietal Type

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Agriculture is adopting, without modification, as a final rule the provisions of an interim final rule which established final free and reserve percentages for Natural (sun-dried) Seedless raisins from California's 1988 raisin crop production. These percentages are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Raisin Administrative Committee (Committee), the administrative agency responsible for local administration of the Federal marketing order regulating

the handling of raisins produced from grapes grown in California. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free tonnage raisins.

**EFFECTIVE DATE:** May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), as amended, hereinafter referred to as the "order", regulating the handling of raisins produced from grapes grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 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 23 handlers of California raisins subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins already released under the preliminary percentages and to be released under the final percentages, the order specifies methods to make available additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, export sales, and school lunch programs.

The U.S. Department of Agriculture's Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders specify that 110 percent of recent years' sales be made available to primary markets each season. This requirement will be met by the establishment of final percentages which release 100 percent of the computed trade demand, and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous sales of reserve pool raisins which are made available to handlers each season. For each such offer, at least 10 percent of the prior year's shipments are made available for free use.

Pursuant to § 989.54(a), the Committee met on August 12, 1988, to review shipment data, inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might have been recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for the 1988–89 crop year shall be 60,000 tons for Natural (sun-dried) Seedless raisins. The carryin used for adjusting the trade demand was 27,973 tons for Natural (sun-dried) Seedless raisins.

In accordance with these provisions, the Committee computed and announced a trade demand of 262,487 tons for Natural (sun-dried) Seedless raisins, 8,861 tons for Dipped Seedless raisins, 3,856 tons for Oleate and Related Seedless raisins, 13,707 tons for Golden Seedless raisins, 134 tons of Sultanas, 0 tons for Muscat raisins, 3,154 tons for Zante Currant raisins, 160 tons for Monukka raisins, and 536 tons for Other Seedless raisins.

As required under § 989.54(b), the Committee met on October 4, 1988, and computed and announced a preliminary crop estimate of 379,313 tons and preliminary free and reserve percentages for Natural (sun-dried) Seedless raisins of 59 percent free and 41 percent reserve, respectively. Handlers operate under the preliminary percentages until the industry is able to obtain a more accurate estimate of raisin production for that year. The field price for Natural (sun-dried) Seedless raisins had been established. Therefore, in accordance with § 989.54(b), the preliminary free and reserve percentages computed and announced by the Committee for Natural (sun-dried) Seedless raisins released 85 percent of the computed trade demand. Preliminary percentages were not announced for the other eight varietal types; therefore, the total available supply was released for each.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release up to 99 percent of the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for Natural (sun-dried) Seedless raisins of 69 percent free and 31 percent reserve were computed and announced on January 13, 1989. The interim percentages for Natural (sun-dried) Seedless raisins released 98.5 percent of the computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including the final crop estimate and other information, on which to base the determination of final free and reserve percentages.

On January 13, 1989, the Committee met and recommended final free and reserve percentages for the 1988–89 crop

year and made its final production estimate for Natural (sun-dried) Seedless raisins. The Committee's final estimate of 1988–89 production of Natural (sun-dried) Seedles raisins totaled 374,623 tons, which includes the 1988 diversion tonnage of 50,000 tons (4,690 tons less than the preliminary estimate). Dividing the computed trade demand of 262,487 tons by the final estimate of production results in a final free percentage of 70.07 percent. The Committee rounded that percentage to 70 percent which results in a final reserve percentage of 30 percent.

An interim final establishing the percentages was issued on February 21, 1989, and was published in the **Federal Register** on February 24, 1989 (54 FR 7927). Comments were solicited from interested persons through March 27, 1989. No comments were received. Thus, the percentages as established by that interim final rule are adopted without change.

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

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because it continues in effect percentages implemented by the previously mentioned interim final rule. Further, the relevant provisions of this part require that the percentages designated herein for the 1988–89 crop year apply to all Natural (sun-dried) Seedless raisins acquired from the beginning of that crop year, and handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages.

### List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.241 is added to Subpart—Supplementary Regulations to read as follows:

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

**§ 989.241 Final free and reserve percentages for the 1988–89 crop year.**

The final percentages of standard Natural (sun-dried) Seedless raisins acquired by handlers during the crop year beginning August 1, 1988, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

| | Free percentage | Reserve percentage |
|---|---|---|
| Natural (sun-dried) Seedless..... | 70 | 30 |

Dated: May 2, 1989.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 89–10850 Filed 5–4–89; 8:45 am]

BILLING CODE 3410–02–M

## Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 89–055]**

## Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of the state of Alabama from a modified accredited state to an accredited-free state.

**EFFECTIVE DATE:** June 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–7716.

**SUPPLEMENTARY INFORMATION:**

### Background

In an interim rule published in the **Federal Register** and effective January 31, 1989 (54 FR 4758–4759, Docket Number 89–004), we amended § 77.1 of the tuberculosis regulations by removing Alabama from the list of modified accredited states and adding it to the list of accredited-free states.

Comments on the interim rule were required to be postmarked or received on or before April 3, 1989. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

### Executive Order 12291 and Regulatory Flexibility Act

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

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the state of Alabama may affect the marketability of cattle and bison from the state since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

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

### Paperwork Reduction Act

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

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

## PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR Part 77 that was published at 54 FR 4758–4759 on January 31, 1989.

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

Done at Washington, DC, this 1st day of May 1989.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–10848 Filed 5–4–89; 8:45 am]

BILLING CODE 3410–34–M

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## 9 CFR Part 113

[Docket No. 89–008]

## Viruses, Serums, Toxins, and Analogous Products; Amendment of the Standard Requirement Concerning the Determination of Moisture Content in Desiccated Biological Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Animal and Plant Health Inspection Service (APHIS) is amending the standard requirement for determining the moisture content in desiccated veterinary biological products. New methods and test procedures are now available for controlling and monitoring residual moisture content which are equally acceptable and more efficient than the test procedure specified in the current standard requirement. Manufacturers will be allowed to establish and test for moisture content using approved procedures specified in an Outline of Production approved for filing by APHIS.

**EFFECTIVE DATE:** June 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6332.

**SUPPLEMENTARY INFORMATION:**

**Background**

The moisture content of a desiccated biological product is related to the stability of that product during its dating period. In order to provide a uniform method of determining moisture content in desiccated products, a test procedure was published in § 113.29 of the regulations in 1973. This test procedure was considered the most accurate and reproducible test method available at that time. All manufacturers of such products are currently required to determine moisture content of desiccated products using this procedure. The procedure takes 2 days to complete and requires special laboratory equipment not normally used in other tests. The veterinary biologics industry and APHIS have gained much knowledge and experience testing products during the past 15 years. Other means of determining moisture content during the production process have been developed which are more rapid and less expensive than the test method specified in the regulations. Lyophilizers installed in some manufacturing facilities are equipped with highly sophisticated sensors and modules that monitor temperature, air, time, and vacuum pressure at shelf level. Some are equipped to measure temperature of selected vials during the drying process. Most are equipped to stopper and seal vials before internal vacuum is broken thus preventing the introduction of external moisture. Each product is unique and an acceptable range for moisture has been established by manufacturers for each of their products. The desiccating cycles can be adjusted to the criteria established for each product.

Other assurances are also employed by the manufacturer and APHIS to determine the stability of biological products. Eligibility for release of a serial requires that the product have predetermined titers at release and throughout the dating period. These titers are confirmed by the manufacturer and the National Veterinary Services Laboratories. Section 114.13 of the regulations requires the expiration period to be confirmed by satisfactory potency tests on a significant number of serials at the end of the expected dating period. In few instances when the moisture content exceeds the stated requirement, serials can be released provided that the potency is shown to be satisfactory at mid-dating and at the end of the dating period. Under this amendment, procedures employed by manufacturers to determine moisture content will be specified on a product-by-product basis in the Outline of Production as an in-process test in accordance with § 114.9(d).

**Comments Received**

On August 19, 1988, we published a proposal in the **Federal Register** (49 FR 31704–31705, Docket No. 88–084) discussing this revision and soliciting comments.

We solicited comments concerning the proposal for 60 days ending October 18, 1988, and received eight comments. Comments were received from five licensed manufacturers, one unlicensed manufacturer, a consultant to biologic manufacturers, and the National Trade Association for the major U.S. manufacturers of animal health products, including biological products. None opposed adoption of the proposed amendment.

Several commenters requested a clarification of the in-process test(s) which must be specified in the Outline of Production approved for filing by APHIS for each product. The amendment will allow each manufacturer to select an alternative method that has been shown to be at least as accurate as the current test procedure in measuring residual moisture content in desiccated biological products. A description of the test method along with supporting data must be submitted to APHIS for approval. The commenters also observed that the wording in the proposed amendment refers to a "minimum" moisture content. The concern should be for the maximum residual moisture content established for each product. The wording in § 113.29 has been corrected in that respect. In addition, the second sentence of the proposed amendment has been revised to more accurately reflect the intent of the proposal and to clarify the wording of the regulation. The amendatory language in action No. 3 has been changed to ensure that the paragraphs in § 113.64 are properly designated.

These changes are editorial and do not substantively change the proposal.

**Executive Order 12291 and Regulatory Flexibility Act**

This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as not a "Major Rule." The final rule will have an effect on the economy of less than $100 million; will not result in a major increase in costs or prices to 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 markets. This action will provide for flexibility in methods used to monitor moisture content of desiccated veterinary biological products by not requiring a specific test procedure.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not result in adverse economic impact on a substantial number of small entities. Its purpose is to update the Standard Requirements for the production of veterinary biological products.

**Executive Order 12372**

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

**Paperwork Reduction Act**

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

**List of Subjects in 9 CFR Part 113**

Animal biologics.

Accordingly, we are amending 9 CFR Part 113 as follows:

## PART 113—STANDARD REQUIREMENTS

1. The authority citation for Part 113 is revised to read as follows:

**Authority:** 21 U.S.C. 151–159; 37 FR 28477, 28646; 38 FR 19141.

2. Section 113.29 is revised to read as follows:

**§ 113.29 Determination of moisture content in desiccated biological products.**

The moisture content shall be determined for each serial of desiccated product. The maximum moisture content for each product shall be established and an acceptable method used to determine moisture content shall be described in an Outline of Production approved for filing by APHIS.

**§ 113.64 [Amended]**

3. In § 113.64, paragraph (e)(2) is removed; the paragraph designation (1) for paragraph (e)(1) is removed; and previously designated paragraphs (e)(1)(i) and (e)(1)(ii) are redesignated as paragraphs (e)(1) and (e)(2), respectively.

**§ 113.135 [Amended]**

4. In § 113.135, paragraph (e)(2) is removed and the designation (1) for paragraph (e)(1) is removed.

Done in Washington, DC, this 28th day of April 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–10774 Filed 5–4–89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 89–ACE–03]**

### Alteration of Transition Area—Brookfield, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the transition area description at Brookfield, Missouri. The Brookfield, Missouri, Municipal Airport has been renamed the General John J. Pershing Memorial Airport. Accordingly, the transition area description is being altered to reflect this name change.

**EFFECTIVE DATE:** 0901 u.t.c., September 21, 1989.

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

**SUPPLEMENTARY INFORMATION:**

**The Rule**

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at Brookfield, Missouri. The Brookfield, Missouri, Municipal Airport has been renamed the General John J. Pershing Memorial Airport. Accordingly, alteration of the Brookfield transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

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

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

**§ 71.181 [Amended]**

2. By amending § 71.181 as follows:

**Brookfield, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the General John J. Pershing Memorial Airport (lat. 39°45'40"N., long. 93°06'15"W.) and within 3 miles each side of the 320° bearing from the Brookfield, Missouri, nondirectional beacon (lat. 39°45'51"N., long. 93°06'32"W.), extending from the 5-mile radius area to 8 miles northwest of the nondirectional beacon.

This amendment becomes effective at 0901 u.t.c. September 21, 1989.

Issued in Kansas City, Missouri, on April 21, 1989.

**Clarence E. Newbern,**

*Manager, Air Traffic Division.*

[FR Doc. 89–10788 Filed 5–4–89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ACE-04]

## Alteration of Transition Area—Chillicothe, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the Chillicothe, Missouri, transition area by deleting therefrom the 1,200-foot transition area designation. Since the Missouri transition area already provides for that airspace, it is redundant to repeat it in the Chillicothe, Missouri, transition area description.

**EFFECTIVE DATE:** 0901 u.t.c., September 21, 1989.

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

**SUPPLEMENTARY INFORMATION:** The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area at Chillicothe, Missouri. This transition area presently includes a 1,200-foot airspace description. Since the Missouri transition area already provides for that airspace, it is unnecessary to have it reiterated in the Chillicothe, Missouri, transition area designation. Accordingly, action is taken herein to make this deletion. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6E dated January 3, 1989.

### Discussion of Comments

Since this action eliminates a redundancy, does not require charting changes, and decreases the size of the transition area, it is an amendment in which the public would not be particularly interested. Therefore, notice and public procedures hereon under 5 U.S.C. 553(b) are unnecessary.

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

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

### § 71.181 [Amended]

2. By amending § 71.181 as follows:

**Chillicothe, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Chillicothe Municipal Airport (lat. 39°46'45" N., long. 93°30'00" W.); and within 3 miles either side of the 337° bearing from the Chillicothe NDB (lat. 39°46'32" N., long. 93°29'39" W.) extending from the 5-mile radius to 8.8 miles northwest.

This amendment becomes effective at 0901 u.t.c. September 21, 1989.

Issued in Kansas City, Missouri, on April 21, 1989.

**Clarence E. Newbern,**

*Manager, Air Traffic Division.*

[FR Doc. 89-10789 Filed 5-4-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-05]

## Alteration of Transition Area—Fulton, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the transition area description at Fulton, Missouri. The Fulton NDB has been renamed Guthrie NDB. Accordingly, the transition area description is being altered to reflect this name change.

**EFFECTIVE DATE:** 0901 u.t.c., September 21, 1989.

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

**SUPPLEMENTARY INFORMATION:**

### The Rule

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71.181) is to alter the transition area description at Fulton, Missouri. The name of the Fulton NDB has been changed to Guthrie NDB. Accordingly, alteration of the Fulton transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

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

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

**§ 71.181 [Amended]**

2. By amending Section 71.181 as follows:

**Fulton, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Fulton Municipal Airport (lat., 38°50'22" N., long. 92°00'17" W.), and within 2 miles each side of the Hallsville, Missouri, VORTAC, 154° radial; extending from the 5-mile radius area to 6 miles northwest of the Fulton Municipal Airport, and within 3 miles each side of the Guthrie, Missouri, NDB (lat. 38°50'34" N., long. 92°00'16" W.), 229° bearing; extending from the 5-mile radius area to 8.5 miles southwest of the NDB, and within 3 miles each side of the NDB facility 065° bearing; extending from the 5-mile radius area to 8.5 miles northeast of the NDB; excluding that portion which overlies the Columbia, Missouri, 700 foot transition area.

This amendment becomes effective at 0901 u.t.c. September 21, 1989.

Issued in Kansas City, Missouri, on April 21, 1989.

**Clarence E. Newbern,**

*Manager, Air Traffic Division.*

[FR Doc. 89-10790 Filed 5-4-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-ACE-06]**

## Alteration of Transition Area—Higginsville, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the transition area description at Higginsville, Missouri. The Higginsville, Missouri, Municipal Airport has been renamed the Higginsville Industrial Municipal Airport. Accordingly, the transition area description is being altered to reflect this name change.

**EFFECTIVE DATE:** 0901 u.t.c., September 21, 1989.

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

**SUPPLEMENTARY INFORMATION:**

**The Rule**

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area description at Higginsville, Missouri. The Higginsville, Missouri, Municipal Airport is being renamed the Higginsville Industrial Municipal Airport. Accordingly, alteration of the Higginsville transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

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

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

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

**§ 71.181 [Amended]**

2. By amending § 71.181 as follows:

**Higginsville, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the Higginsville Industrial Municipal Airport (lat. 39°04'20" N., long. 93°40'39" W.); and within 3 miles either side of the 351° bearing from the airport, extending from the 5.5-mile radius to 8 miles north of the airport.

This amendment becomes effective at 0901 u.t.c. September 21, 1989.

Issued in Kansas City, Missouri, on April 21, 1989.

**Clarence E. Newbern,**

*Manager, Air Traffic Division.*

[FR Doc. 89-10791 Filed 5-4-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket Number 89-ACE-08]**

## Alteration of Transition Area—Kirksville, MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the transition area description at Kirksville, Missouri. The Clarence Cannon Memorial Airport, Kirksville, Missouri, has been renamed the Kirksville Regional Airport. Accordingly, the transition area description is being altered to reflect this name change.

**EFFECTIVE DATE:** 0901 u.t.c. September 21, 1989.

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

**SUPPLEMENTARY INFORMATION:**

**The Rule**

The purpose of this amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the transition area description at Kirksville, Missouri. The Clarence Cannon Memorial Airport, Kirksville, Missouri, has been renamed the Kirksville Regional Airport. Accordingly, alteration of the Kirksville transition area description is necessary to reflect this name change. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the FAR (14 CFR Part 71) is amended as follows:

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

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

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

**§ 71.181 [Amended]**

2. By amending § 71.181 as follows:

**Kirksville, Missouri [Revised]**

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of the Kirksville Regional Airport (lat. 40°05'33" N., long. 92°32'41" W.), within 3 miles each side of the Kirksville, Missouri, VORTAC 320° radial extending from the 6½-mile radius area to 8 miles northwest of the VORTAC, and within 5 miles each side of the 180° bearing from the Kirksville Regional Airport extendng from the 6½-mile radius area to 13½ miles south of the airport.

This amendment becomes effective at 0901 u.t.c. September 21, 1989.

Issued in Kansas City, Missouri, on April 21, 1989.

**Clarence E. Newbern,**

*Manager, Air Traffic Division.*

[FR Doc. 89–10858 Filed 5–4–88; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### 15 CFR Ch. VII

**[Docket No. 90389–9089]**

## Amendments and Redesignation of the Industrial Mobilization Regulations

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations governing national security investigations performed under section 232 of the Trade Expansion Act of 1962, as amended. By notice published on January 9, 1989 (54 FR 601), the Regulations were redesignated as 15 CFR Parts 700 and 705 and published in Chapter VII under Title 15 of the *Code of Federal Regulations.*

This rule also assigns Parts 700 through 709 to Subchapter A, Parts 710 through 729 to Subchapter B, and Parts 730 through 799 to Subchapter C. These amendments are being made to facilitate organized development of Chapter VII in the future and modify procedures by which copies of reports of investigations performed under section 232 of the Trade Expansion Act are made available to the public.

**EFFECTIVE DATE:** January 1, 1989.

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

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

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

2. This rule does not involve a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

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.

Accordingly, it is being issued in final form. However, comments from the public are always welcome. Comments should be submitted to Edward L. Levy, Section 232 Program Manager, Office of Industrial Resource Administration, Bureau of Export Administration.

**List of Subjects in 15 CFR Part 705**

Defense priorities, Investigations, National security.

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

## PART 705—[AMENDED]

1. The authority citation for Part 705 continues to read as follows:

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

2. In Chapter VII, a new Subchapter A consisting of Parts 700 through 709 is established and the Subchapter A heading is added to read as follows:

**SUBCHAPTER A—NATIONAL SECURITY INDUSTRIAL BASE REGULATIONS**

3. In Chapter VII, a new Subchapter B consisting of Parts 710 through 729 is established and reserved as follows:

**SUBCHAPTER B—[RESERVED]**

4. In Chapter VII, a new Subchapter C consisting of Parts 730 through 799 is established and the Subchapter C heading is added to read as follows:

**SUBCHAPTER C—EXPORT ADMINISTRATION REGULATIONS**

5. The phrase "International Trade Administration Freedom of Information Records Inspection Facility, Room 3102" is revised to read "Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4886" in § 705.7(b) and § 705.8(b)(6).

6. In § 705.10, paragraph (c) is revised to read as follows:

**§ 705.10 Report of an investigation and recommendation.**

* * * * *

(c) The Executive Summary of the report, excluding the sections containing national security classified and business confidential information and material, shall be published in the **Federal Register** upon the disposition of each request, application, or motion made pursuant to this part. Copies of the full report will then be available for public inspection and copying in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H–4886, U.S. Department of Commerce, Washington, DC 20230.

Dated: May 2, 1989.

**John A. Richards,**

*Deputy Assistant Secretary for Industrial Resource Administration.*

[FR Doc. 89–10866 Filed 5–4–89; 8:45 am]

BILLING CODE 3510–DT–M

**Technology Administration**

**15 CFR Part 1150**

**[Docket No. 90248-9104]**

## Marking of Toy, Look-Alike and Imitation Firearms

**AGENCY:** Technology Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Technology Administration of the United States Department of Commerce is today issuing a final rule to implement section 4 of the Federal Energy Management Improvement Act of 1988 ("Act") (Pub L. 100-615) which prohibits the manufacturing, entering into commerce, shipping, transporting, or receipt of any toy, imitation or look-alike firearm ("device") unless such device contains, or has affixed to it, a marking approved by the Secretary of Commerce. The final rule maintains the method of marking established by section 4(b)(1) of the Act and establishes an alternative method of marking when a device is not capable of being marked by the method established by section 4(b)(1) and three alternative methods of marking which may be used in all instances. In addition, the rule waives marking requirements for any toy, look-alike, or imitation firearm that will be used only in the theatrical, movie, or television industries.

**DATE:** This rule is effective May 5, 1989. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. Stanley I. Warshaw, Associate Director for Industry and Standards, National Institute of Standards and Technology, telephone number (301) 975-4000, FAX (301) 926-0647.

**SUPPLEMENTARY INFORMATION:** Section 4(a) of the Federal Energy Management Improvement Act of 1988 provides that "it shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Secretary of Commerce * * *." (15 U.S.C. 5001(a).) Section 4(b)(1) of the Act establishes as an initial acceptable marking a permanently affixed, blaze orange plug inserted in the barrel of the toy, look-alike, or imitation firearm, recessed no more than 6 millimeters from the muzzle end of the barrel, and made an integral part of the device. (15 U.S.C. 5001(b)(1).) Section 4(b)(2) authorizes the Secretary to approve an alternative marking for any toy, look-alike, or imitation firearm not capable of being marked with the requisite blaze orange plug, and to waive the marking requirements for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industries. (15 U.S.C. 5001(b)(2).) Section 4(b)(3) authorizes the Secretary to adjust or change the marking system established pursuant to sections 4(b) (1) and (2), after consultation with interested persons. (15 U.S.C. 5001(b)(3).)

The Technology Administration held a public workshop at the National Institute of Standards and Technology on February 9, 1989, on the marking requirements of the Act. (See 53 FR 50987, Dec. 19, 1988.) The workshop was attended by forty representatives of trade associations, manufacturers, importers, distributors and Federal Agencies. Many attendees brought samples of toy, look-alike or imitation firearms. Although not requested, written comments were received in advance and subsequent to the workshop.

Based on the comments received and consultations at the workshop and elsewhere with trade associations, manufacturers, importers, distributors, collectors, retailers, police chiefs, and Federal Agencies, the Under Secretary for Technology published a Notice of Proposed Rulemaking in the Federal Register on March 14, 1989 (54 FR 10550). The notice proposed to maintain the blaze orange plug marking established by section 4(b)(1) of the Act and establish as an alternative marking system for water guns, air-soft guns, light emitting guns or other ejecting toy, look-alike or imitation firearms which, as such, cannot be marked with a plug in the muzzle end of the barrel because it would restrict the opening necessary to discharge such things as water, non-metallic projectiles, and light, a blaze orange marking permanently affixed to the exterior surface of the barrel and covering the circumference of the barrel and extending from the muzzle end for a depth of at least 6 millimeters. The notice also proposed to adjust the statutory marking system by permitting three other methods of marking for use in the alternative irrespective of whether the device could be marked with the blaze orange plug or blaze orange muzzle marking. The three alternatives proposed were to mark the device at manufacture by:

(1) Constructing it entirely of transparent or translucent materials which permit unmistakable observation of the device's complete contents; (2) permanently coloring the entire exterior surface of the device bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern; or (3) permanently coloring the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern. These alternatives were selected because they represent standard industry practice for most toy, look-alike and imitation firearms and, in the opinion of those consulted, are sufficient to identify the device as a toy, look-alike, or imitation firearm rather than as a real firearm. Finally, the notice proposed to waive marking requirements for any toy, look-alike or imitation firearm that will only be used in the theatrical, movie or television industries.

Section 4(c) of the Act specifically excludes from the Act's marking requirements or any marking requirements established thereunder look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure. (15 U.S.C 5001(c).) However, it is clear from the legislative history of section 4 that it was the intent of Congress to also exclude from marking requirements traditional B-B, paint-ball, and pellet-firing air guns that expel a projectile through the force of compressed gas or mechanical spring action, or a combination thereof. Accordingly, the notice proposed to exclude from marking requirements look-alike, non-firing, collector replicas of antique firearms designed, manufactured, and produced prior to 1898, and traditional B-B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof.

In response to the March 14, 1989 Notice of Proposed Rulemaking, the Technology Administration received twenty-eight comments, five from manufacturers, vendors, or their representatives or attorneys; ten from police officials at various levels of government; four from State legislators and executive officials; seven from interested members of the public; and two from elements of the U.S. Government. Eight of the commenters fully supported the regulation, thirteen supported the regulation but recommended changes, four took the

position that a total ban on realistic toy guns was necessary and therefore opposed the regulation as too weak, and three took no position.

The two most frequent comments about the regulation were, first, that the marking requirements should be changed to eliminate the recessed orange plug as an acceptable marking, and second, that a complete ban on realistic toy guns was needed. Eight commenters raised the first issue and five raised the second. No changes are being made to the regulations at this time as a result of either comment. The Technology Administration is awaiting the results of a study by the Director of the National Institute of Justice, mandated by section 4(e) of the Act, before deciding whether to remove the recessed orange plug as an acceptable marking. That study is a technical evaluation of the marking system established by the Act and of the alternative marking systems being implemented by this regulation. The Act requires that study to be completed within nine months of enactment, or no later than August 5, 1989. With respect to the comments requesting a complete ban on realistic toy guns, the Secretary of Commerce has no authority under the Act to take such action.

Other comments received are described below, listed by commenter. Among the five manufacturers, vendors, and their representatives, all generally supported the methods of marking contained in the proposed regulation. However, three requested changes in § 1150.1 "Applicability" of the regulation to make clear the intent of Congress that the regulation did not apply to toy, look-alike or imitation firearms that are non-firing replicas of an antique firearm modeled on a real firearm designed, manufactured, and produced prior to 1898. The final regulation has been revised to accommodate this request. One commenter requested an exemption from the regulations for airguns and look-alike guns marketed to the adult buyer; another commenter requested that section 1150.5, dealing with preemption of marking requirements by state and local governments, be strengthened. These requested changes have not been made, because the Secretary of Commerce has no authority under the Act to make the requested changes.

Among the ten police officials, all generally supported the proposed regulation, although as discussed above, six of the ten questioned the effectiveness of a recessed orange plug without additional marking. In addition, two of the ten commenters suggested the inclusion of BB guns and the like under the scope of the regulation. Because the exclusion of BB guns is statutorily mandated by section 4(c) of the Act, the requested change was not made.

Four comments were received from representatives of state governments, three supporting the regulation and one opposing it. The Consumer Protection Board of one state fully supported the regulation, as did the Department of Human Resources of a second state. The Consumer Council of a state Department of Agriculture supported the alternative marking schemes, but questioned the utility of the recessed blaze orange plug, recommending elimination of that method of marking. One state Senator opposed the regulation, strongly supporting in its place a total ban on toy guns and look-alikes.

Seven comments were received from the general public, four generally supporting the regulation and three preferring a total ban on toy guns and look alikes. Finally, materials were received from Senator Cranston of California and the National Institute of Justice, neither of which specifically commented on the regulation.

The final rule repeats the blaze orange plug method of marking established by the Act and repeats the preemption set forth in the statute. In all other respects it grants waivers and allows less restrictive methods of marking. Accordingly, since the rule thus grants or recognizes an exemption and relieves restrictions, under section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) it may and is being made effective without a 30 day delay in effective date.

**Additional Information**

*Executive Order 12291*

The Under Secretary for Technology has determined that this rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 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 effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

*Executive Order 12612*

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

*Executive Order 12372*

This rule does not involve Federal financial assistance, direct Federal development, or the payment of any matching funds from a state or local government. Accordingly, the requirements of Executive Order 12372 are not applicable to this rule.

*Executive Order 12630*

This rule does not pose significant takings implications within the meaning of Executive Order 12630.

*Regulatory Flexibility Act*

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the time this rule was proposed that, if it were adopted as proposed, it would not have a significant economic impact on a substantial number of small entities because the alternative markings conform to existing industry practices for most toy, look-alike, and imitation firearms, thus reducing the rule's impact to only where such practices are not followed. As a result, a Regulatory Flexibility Analysis is not required to be prepared under the Regulatory Flexibility Act

*Paperwork Reduction Act*

This rule does not contain information collection requirements subject to the Paperwork Reduction Act.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act of 1969.

**List of Subjects in 15 CFR Part 1150**

Commerce, Business and industry, Labeling, Hobbies, Imports, Exports, Shipping, Toys, Transportation, Freight, Incorporation by reference.

**Lee W. Mercer,**

*Deputy Under Secretary for Technology.*

Dated: April 28, 1989.

For reasons set forth in the preamble, Title 15, Subtitle B of the Code of Federal Regulations is amended by adding a Chapter XI, consisting of Part 1150, to read as follows:

**CHAPTER XI—TECHNOLOGY ADMINISTRATION, DEPARTMENT OF COMMERCE**

## PART 1150—MARKING OF TOY, LOOK-ALIKE AND IMITATION FIREARMS

Sec.
1150.1 Applicability.
1150.2 Prohibitions.
1150.3 Approved markings.
1150.4 Waiver.
1150.5 Preemption

**Authority:** Section 4 of the Federal Energy Management Improvement Act of 1988, 15 U.S.C. 5001.

### § 1150.1 Applicability.

This part applies to toy, look-alike and imitation firearms ("devices") having the general appearance, shape, and/or configuration of a firearm and produced or manufactured and entered into commerce on or after May 5, 1989. including devices modelled on real firearms manufactured, designed, and produced since 1898. This part does not apply to any toy, look-alike, or imitation firearm that is a non-firing replica of an antique firearm modelled on a real firearm designed, manufactured, and produced prior to 1898, nor to traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of compressed air, compressed gas or mechanical spring action, or any combination thereof, as described in American Society for Testing and Materials standard F 589–85, *Standard Consumer Safety Specification for Non-Powder Guns,* June 28, 1985. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa. 19103. Copies may be inspected at the office of the Associate Director for Industry and Standards, National Institute for Standards and Technology, Gaithersburg, Maryland, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

### § 1150.2 Prohibitions.

No person shall manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm ("device") covered by this Part as set forth in § 1150.1 of this part unless such device contains, or has affixed to it, one of the markings set forth in § 1150.3 of this part, or unless this prohibition has been waived by § 1150.4 of this part.

### § 1150.3 Approved markings.

The following markings are approved by the Secretary of Commerce:

(a) A blaze orange (*Federal Standard 595a, February, 1987, color number 12199,* issued by the General Services Administration) solid plug permanently affixed to the muzzle end of the barrel as an integral part of the entire device and recessed no more than 6 millimeters from the muzzle end of the barrel. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of Federal Standard 595a may be obtained from the Office of Engineering and Technical Management, Chemical Technology Division, Paints Branch, General Services Administration, Washington DC 20406. Copies may be inspected at the office of the Associate Director for Industry and Standards, National Institute for Standards and Technology, Gaithersburg, Maryland, or at the Office of the Federal Register. 1100 L Street, NW., Room 8401, Washington DC.

(b) For any water gun, air-soft gun, light-emitting gun or other ejecting toy, look-alike or imitation firearm having an opening to discharge such things as water, non-metallic projectiles, and light, a blaze orange (*Federal Standard 595a, February, 1987, color number 12199,* issued by the General Services Administration) marking permanently affixed to the exterior surface of the barrel, covering the circumference of the barrel from the muzzle end for a depth of at least 6 millimeters. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S C. 552(a) and 1 CFR Part 51. Copies of Federal Standard 595a may be obtained from the Office of Engineering and Technical Management, Chemical Technology Division, Paints Branch, General Services Administration, Washington, DC 20406. Copies may be inspected at the office of the Associate Director for Industry and Standards, National Institute for Standards and Technology, Gaithersburg, Maryland, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

(c) Construction of the device entirely of transparent or translucent materials which permits unmistakable observation of the device's complete contents.

(d) Coloration of the entire exterior surface of the device in bright red, bright orange, bright yellow, bright green, or bright blue, either singly or as the predominant color in combination with other colors in any pattern.

(e) Coloration of the entire exterior surface of the device predominantly in white in combination with one or more of the colors bright red, bright orange, bright yellow, bright green, or bright blue in any pattern.

### § 1150.4 Waiver.

The prohibitions set forth in § 1150.2 of this part are waived for any toy, look-alike or imitation firearm that will be used only in the theatrical, movie or television industries.

### § 1150.5 Preemption.

In accordance with section 4(g) of the Federal Energy Management Improvement Act of 1988 (15 U.S.C. 5001(g)), the provisions of section 4(a) of that Act and the provisions of this part supersede any provision of State or local laws or ordinances which provides for markings or identification inconsistent with the provisions of section 4 of that Act or the provisions of this part.

[FR Doc. 89–10758 Filed 5–4–89; 8:45 am]
BILLING CODE 3510–13–M

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**FEDERAL TRADE COMMISSION**

**16 CFR Part 13**

**[Docket 9204]**

## PPG Industries, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Pittsburgh, Pa. manufacturer and seller to obtain prior Commission approval before acquiring any interest in a company that makes aircraft transparencies, if that company has more than $750,000 in sales in the U.S., and to provide the FTC prior notice before making other acquisitions.

**DATE:** Complaint issued January 29, 1986. Order issued April 5, 1989.[1]

**FOR FURTHER INFORMATION CONTACT:** Steven A. Newborn, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

**SUPPLEMENTARY INFORMATION:** On Friday, January 13, 1989, there was published in the **Federal Register**, 54 FR

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580.

1396, a proposed consent agreement with analysis In the Matter of PPG Industries, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement and made its jurisdictional findings in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock Or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5–20 Federal Trade Commission. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–50 Maintain means of communication.

**List of Subjects in 16 CFR Part 13**

Aircraft transparencies, Windows, Windshields, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89–10776 Filed 5–4–89; 8:45 am]

BILLING CODE 6750–01–M

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**16 CFR Part 13**

**[Docket C–3247]**

## Cleveland Automobile Dealers' Association; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Cleveland Automobile Dealers' Association (CADA) from limiting its members' hours, from maintaining any policy concerning hours of operation, and from encouraging members to influence each other as to their hours. The consent order requires respondent to advertise in the newspaper that dealers' hours are no longer restricted and also change its Articles of Incorporation or other policy statements to reflect the consent order.

**DATE:** Complaint and Order issued March 2, 1989.[1]

**FOR FURTHER INFORMATION CONTACT:** Mark Kindt or Steven Balster, Cleveland Regional Office, Federal Trade Commission, Suite 520–A, 668 Euclid Avenue, Cleveland, OH 44114. (216) 522–4210.

**SUPPLEMENTARY INFORMATION:** On Wednesday, December 7, 1988, there was published in the **Federal Register**, 53 FR 49329, a proposed consent agreement with analysis In the Matter of Cleveland Automobile Dealers' Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing And Intimidating: § 13.345 Competitors; § 13.367 Members. Subpart—Combining Or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.410 To eliminate competition in conspirators' goods; § 13.470 To restrain and monopolize trade; § 13.475 To restrict competition in buying. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–50 Maintain means of communication; § 13.533–60 Release of general, specific, or contractual constrictions, requirements, or restraints.

**List of Subjects in 16 CFR Part 13**

Automobile dealers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89–10775 Filed 5–4–89; 8:45 am]

BILLING CODE 6750–01–M

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**16 CFR Part 453**

## Funeral Industry Practices Trade Regulation Rule

**AGENCY:** Federal Trade Commission.

[1] Copies of the Complaint, and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**ACTION:** Final non-substantive amendment.

**SUMMARY:** This document announces the Commission's decision to issue a non-substantive amendment to § 453.10 of the Funeral Industry Practices Trade Regulation Rule (16 CFR Part 453). That section required that the Commission initiate a rulemaking proceeding to review whether the Funeral Rule should remain in effect unchanged or should be amended or repealed, and presently requires that the Commission make its final decision on the recommendations of that review proceeding eighteen months after its initiation. Under that current mandate, the Commission must act by November 30, 1989. The amendment rescinds the eighteen-month time limit for final Commission action. This removal of the mandated time limit for final Commission action is necessary to give the Commission adequate time to comply with the procedural rulemaking requirements of section 18 of the FTC Act (15 U.S.C. 57a).

**EFFECTIVE DATE:** May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Matthew Daynard, Ra'ouf M. Abdullah, or Richard Kelly, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC, 20580, 202–326–3291, 202–326–3024, or 202–326–3304.

**SUPPLEMENTARY INFORMATION:** The Commission promulgated the Funeral Industry Practices Rule on September 24, 1982 (47 FR 42260), and the Rule became fully effective on April 30, 1984 (48 FR 45537 (1983), 49 FR 564 (1984)). The Commission's decision to promulgate the Rule was subsequently affirmed by the 4th U.S. Circuit Court in *Harry & Bryant Co.* v. *FTC*, 726 F.2d 993, *cert. denied*, 469 U.S. 820 (1984). Essentially, the Funeral Rule requires funeral providers to: (1) Disclose prices, available options and other information to consumers in person and over the telephone; (2) make truthful representations regarding legal and other requirements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before embalming the deceased for a fee; (5) refrain from misrepresenting the protective and preservative value of funeral goods and services; and (6) disclose whether they charge a fee for arranging cash advance purchases.

Section 453.10 of the Rule requires that the Commission initiate a rulemaking amendment proceeding four years after the effective date of the Rule, and further requires that the Commission reach a final decision on

that amendment proceeding eighteen months after its initiation. That provision states:

> No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18(d)(2)(B) [of the FTC Act] to determine whether the rule should be amended or terminated. The Commission's final decision on the recommendations of this proceeding shall be made no later than eighteen months after the initiation of the proceeding.

On May 9, 1988, the Commission announced its decision to initiate the rulemaking amendment proceeding mandated by § 453.10 of the Rule, and on May 31, 1988 the Commission published in the **Federal Register** its notice of proposed rulemaking to review the Funeral Rule (53 FR 19864 (1988)). The current language of § 453.10 of the Rule requires that the Commission make a "final decision" on the recommendations of this amendment proceeding by November 30, 1989—eighteen months after its initiation. In order to reach its "final decision," the Commission must either vote to leave the Rule in place unchanged and terminate the proceeding, or vote to repeal or amend the Rule and publish its statement of basis and purpose explaining its decision to repeal or amend.

The Commission has determined that eighteen months is insufficient time to comply with the procedural rulemaking requirements of section 18 of the FTC Act (15 U.S.C. 57a) for this rulemaking proceeding, which, according to staff, has to date generated a high level of public participation and a voluminous record. While four sets of public hearings and a rebuttal period have been completed, the proceeding has several required rulemaking stages yet to come before the Commission can reach its "final decision." A staff report summarizing the rulemaking record and making initial recommendations to the Commission will be published later this year. The Presiding Officer's report will then be published a few weeks after publication of the staff report, followed by a mandatory sixty-day public comment period on those reports. Shortly thereafter, staff will forward its summary of the public comments and final recommendations to the Commission. After its consideration of the record, which may include presentation of oral argument by various interested parties, the Commission will vote on the recommendations. If the Commission votes to leave the Rule in place unchanged and terminate the proceeding, it will have made its "final decision" at that point. If, however, the Commission votes to amend or repeal the rule, staff will then have to draft and forward to the Commission a statement of basis and purpose explaining the Commission's decision. The Commission will then reach its "final decision" by voting to publish its statement of basis and purpose. Any schedule for completion of the amendment proceeding must take into account all of these possible decisions and procedural requirements, because the Commission can not and does not at this juncture presume to know what recommendations it will receive nor what decision it will ultimately make regarding amendment or repeal of the Rule. Taking all these factors into account, the Commission has determined that it is impractical to attempt to reach a "final decision" in this important matter by November 30, 1989—the current deadline required by § 453.10. The Commission has further determined that the proceeding raises important issues that can be resolved expeditiously without establishing a specific deadline for Commission action, and has directed its staff to act accordingly in completing and forwarding the rulemaking record to the Commission.

Accordingly, the Commission has determined to amend § 453.10 by rescinding the time limit for final Commission action concerning the rulemaking amendment proceeding to review the Funeral Rule. The Commission intends to reach a final decision expeditiously without establishing a fixed schedule.

**List of Subjects in 16 CFR Part 453**

Funeral homes, Price disclosure, Trade practices.

16 CFR Part 453 is amended as follows:

## PART 453—FUNERAL INDUSTRY PRACTICES

1. The authority for Part 453 continues to read as follows:

> **Authority:** Sec. 6(g) 38 stat. 721 (15 U.S.C. 46(g)); 80 stat. 383, as amended, 81 stat. 54 (5 U.S.C. 552).

2. Section 453.10 is revised to read as follows:

**§ 453.10 Mandatory review.**

No later than four years after the effective date of this rule, the Commission shall initiate a rulemaking amendment proceeding pursuant to section 18 (d)(2)(b) of the FTC Act to determine whether the rule should be amended or terminated.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-10778 Filed 5-4-89; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 176

**[Docket Nos. 79F-0058 and 83F-0087]**

### Indirect Food Additives: Paper and Paperboard Components

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a polyurethane, produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with a mixture of *N*-methyldiethanolamine and dimethylolpropionic acid. The polyurethane resin is to be used as a sizing agent in the manufacture of paper and paperboard in contact with aqueous and fatty foods. This action responds to two petitions filed by Akzo Chemicals, Inc. (at that time, the Armak Co.).

**DATES:** Effective May 5, 1989; written objections and requests for a hearing by June 5, 1989.

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

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

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of March 30, 1979 (44 FR 19029), FDA announced that a petition (FAP 8B3371) had been filed by Akzo Chemicals, Inc. (at that time, the Armak Co.), 300 South Wacker Dr., Chicago, IL 60606, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of an anionic polyurethane, produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with not more than 10 mole percent *N*-methyldiethanolamine and not less than

90 mole percent dimethylolpropionic acid.

In another notice, published in the **Federal Register** of April 12, 1983 (48 FR 15716), FDA announced that a petition (FAP 8B3370) had been filed by Akzo Chemicals, Inc. (at that time, the Armak Co.), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of an anionic polyurethane, produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with a mixture of *N*-methyldiethanolamine and dimethylolpropionic acid.

FDA notes that although the petitioner's description of the production of the polyurethane additive varies slightly between these filing notices, the additive is, in both cases, produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with not more than 10 mole percent *N*-methyldiethanolamine and not less than 90 mole percent dimethylolpropionic acid. Both petitions also request use of the additive as a sizing agent in the manufacture of paper and paperboard. The agency has therefore combined its review of these petitions in this final rule. FDA also notes that it is unnecessary to list this additive in § 176.180 because use of the additive in § 176.170 authorizes its use by cross-reference for the conditions of use in § 176.180.

FDA in its evaluation of the safety of this additive has reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although the polyurethane additive itself has not been found to cause cancer, it has been found to contain minute amounts of 2,4-toluenediamine and dibutyltin diacetate as byproducts of its production. These impurities have been shown to cause cancer in test animals and may be expected to be present at very low levels in the additive. Residual amounts of reactants and manufacturing aids, such as toluenediamine and dibutyltin diacetate, are commonly found as contaminants in chemical products, including food additives.

## I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the Act (21 U.S.C. 348 (c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

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

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. An additive that has not been shown to cause cancer but that contains a carcinogenic impurity may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

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

## II. Safety of Petitioned Use

FDA estimated the daily intake of the polyurethane produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with a mixture of *N*-methyldiethanolamine and dimethylolpropionic acid on the basis of several factors, including the migration of the additive under the most severe intended conditions of use and the probable concentration of the additive in the daily diet from food-contact articles that contain this substance. The estimated daily dietary exposure to the polyurethane low molecular weight fractions of the additive that are expected to migrate to food is 6.8 micrograms per day (2.3 parts per billion in the diet) for a 60-kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed available data from acute toxicity studies and subchronic studies on the additive. No adverse effects were reported in these studies. Because the polyurethane produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and toluenediisocyanate with a mixture of *N*-methyldiethanolamine and dimethylolpropionic acid has not been shown to cause cancer, the anticancer clause does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemicals that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

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

*A. 2,4-Toluenediamine*

Although 2,4-toluenediisocyanate is one of the starting materials used in the manufacture of the polyurethane sizing agent, any unreacted 2,4-toluenediisocyanate would be hydrolyzed to 2,4-toluenediamine. Therefore, the agency's risk assessment was carried out only for 2,4-toluenediamine.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive, as well as the level of 2,4-toluenediamine that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 2,4-toluenediamine from the use of the additive in paper and paperboard to be 0.0038 parts per billion in the diet or 11.4 nanograms per person per day (Ref. 3). The agency used data from a National Cancer Institute (NCI) carcinogenesis bioassay (Ref. 4) on 2,4-toluenediamine fed to Fischer 344 rats and hybrid B6C3F1 mice to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this polyurethane. The results of the bioassay demonstrated that the material was carcinogenic for female rats under the conditions of the study, inducing neoplasms of the liver and mammary gland.

FDA reviewed the bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 2,4-toluenediamine. The agency further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to 2,4-toluenediamine stemming from the proposed use of the polyurethane could be calculated from the bioassay. The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason the estimate can be used with confidence to determine, to a reasonable certainty, whether any harm will result from the proposed conditions and levels of use of the food additives.

Based on a worst-case exposure of 11.4 nanograms per person per day, FDA estimates that the upper bound limit of individual lifetime risk from the potential exposure to 2,4-toluenediamine resulting from the use of the additive is $4\times10^{-8}$, or less than 1 in 25 million (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 2,4-toluenediamine is expected to be substantially less than the estimated daily intake. Therefore, the calculated upper bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to 2,4-toluenediamine that might result from the proposed use of the additive.

*B. Dibutyltin Diacetate*

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive, as well as the level of dibutyltin diacetate that may be present in the additive (Ref. 3), FDA also estimated the hypothetical worst-case exposure to dibutyltin diacetate from the use of this additive to be 0.0023 parts per trillion in the diet, or 0.069 nanograms per person per day. The agency used data in an NCI carcinogenesis bioassay on dibutyltin diacetate in which dibutyltin diacetate was fed to rats and mice (Ref. 6) to estimate the upper bound level of lifetime human risk from exposure to this chemical, stemming from the proposed use of this additive. The results of the bioassay on dibutyltin diacetate were found by FDA, in its review in 1979, to demonstrate that the material was carcinogenic for male and female mice under the conditions of the study. The test material caused an increased incidence of hepatocellular adenomas of both male and female mouse livers.

The agency recently reevaluated this bioassay and concluded that the available information on dibutyltin diacetate supports the agency's finding in 1979 of the carcinogenicity of this substance (Ref. 7). The agency further concluded that the NCI bioassay provided the appropriate basis on which to calculate an estimate of the upper bound limit of lifetime risk from potential exposure to dibutyltin diacetate stemming from the proposed use of the additive.

Based on a worst-case exposure of 0.069 nanograms per person per day, FDA estimates, using a linear proportional model, that the upper bound limit of individual lifetime risk from potential exposure to dibutyltin diacetate from the use of the polyurethane resin is $1.6\times10^{-11}$, or less than 2 in 100 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to dibutyltin diacetate is expected to be substantially less than the estimated daily intake. Therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to dibutyltin diacetate that might result from the proposed use of the additive.

*C. Needs for Specifications*

The agency has also considered whether specifications are necessary to control the amounts of dibutyltin diacetate and 2,4-toluenediamine in the resin. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which dibutyltin diacetate and 2,4-toluenediamine may be expected to remain as impurities following production of the additive, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to these impurities, even under worst-case assumptions, is very low, less than 2 in 100 billion for dibutyltin diacetate and less than 1 in 25 million for 2,4-toluenediamine.

*D. Conclusion on Safety*

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that the regulation should be amended as set forth below.

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

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

### III. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 5, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### IV. References

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

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

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, October 24, 1983, Cambridge, MA.

3. Memorandum from Food & Color Additives Review Section to Indirect Additives Branch, dated March 10, 1988. "Cumulative Exposure Estimates for Toluenediisocyanate, 2,4-Toluenediamine, Aniline, and Dibutyltin Diacetate. DFCA memorandum of 8-26-87."

4. "Bioassay of 2,4-Diaminotoluene for Possible Carcinogenicity," National Cancer Institute, NTP Technical Report No. 162, 1979.

5. Report of the Quantitative Risk Assessment Committee. "Upper Bound Risk for 2,4-Toluenediamine (TDA) and Dibutyltin Diacetate in FAP's 8B3370 and 8B3371," July 28, 1988.

6. "Bioassay of Dibutyltin Diacetate for Possible Carcinogenicity," National Cancer Institute, NTP Technical Report No. 183, 1979.

7. Memorandum of Conference, Cancer Assessment Committee, February 1, 1989, "Dibutyltin Diacetate".

### List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part I76 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

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

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

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry in the table to read as follows:

**§ 176. 170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(a) * * *

(5) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Anionic polyurethane, produced by reacting the preliminary adduct formed from the reaction of glyceryl monostearate and 2,4-toluenediisocyanate with not more than 10 mole percent *N*-methyldiethanolamine and not less than 90 mole percent dimethylolpropionic acid. The final product is a 15 to 20 percent by weight aqueous solution, having a Brookfield viscosity of 25 to 100 centipoises at 24 °C (75 °F). | For use only as a surface sizing agent at a level not to exceed 0.1 percent by weight of dry paper and paperboard. |
| * * * * * | |

* * * * *

Dated: April 27, 1989.

**Alan L. Hoeting,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 89-10761 Filed 5-4-89; 8:45 am]

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

[T.D. 8249]

RIN 1545-AK21

## Minimum Tax—Tax Benefit Rule

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the application of the tax benefit rule to the minimum tax. Changes to the applicable law were made by the Tax Reform Act of 1976. The regulations provide taxpayers with guidance necessary to determine the amount of tax preference items that do not provide a current tax benefit because of available credits and, therefore, are not subject to minimum tax. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the Federal Register.

**DATES:** Except as otherwise provided, the amendments are effective for items of tax preference that are subject to the minimum tax imposed by section 56 of the Code and arise in taxable years beginning after December 31, 1975, and before January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** William A. Jackson, 202-566-4196, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information requirements contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1093. The estimated annual burden per respondent or recordkeeper varies from 10 minutes to 14 minutes, depending on individual circumstances, with an estimated average of 12 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual

respondents may require greater or less time, depending on individual circumstances.

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

**Background**

This document contains temporary regulations amending the Income Tax Regulations (26 CFR Part 1) under section 58(h) of the Internal Revenue Code of 1954 (Code). These amendments would conform the regulations to section 301(d)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1553) and are issued under the authority contained in sections 58(h) and 7805 of the Code (90 Stat. 1553 and 68A Stat. 917; 26 U.S.C. 58(h), 7805).

These temporary regulations are applicable for purposes of determining minimum tax liability imposed by section 56 of the Code for taxable years beginning before January 1, 1987. Except as otherwise provided, the temporary regulations do not apply for purposes of determining alternative minimum tax liability imposed by section 55.

**Explanation of Provisions**

*In General*

For taxable years beginning after December 31, 1976, and before January 1, 1987, section 56 of the Code imposes a 15-percent minimum tax on a corporate taxpayer's tax preference items, as defined in section 57, to the extent that such preference items exceed the greater of (i) $10,000, or (ii) the taxpayer's regular tax liability computed without regard to taxes imposed by sections 531 and 541 and after reduction by credits. This minimum tax is imposed in addition to other taxes imposed by chapter 1 of the Code. Section 58(h) provides that the Secretary shall prescribe regulations under which items of tax preference shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of tax under subtitle A of the Code for any taxable years.

*Application of the Tax Benefit Rule*

Section 1.58-9T(a) of the temporary regulations provides that under section 58(h) of the Code taxpayers are not liable for the minimum tax imposed by section 56 on tax preference items from which no current tax benefit is derived because available credits would have reduced or eliminated the taxpayer's regular tax liability if preference items had not been allowed in computing taxable income. These regulations follow the holding in *First Chicago Corp.* v. *Commissioner*, 88 T.C. 663 (1987), *aff'd*, 842 F.2d 180 (7th Cir. 1988). In *First Chicago* the court held that under section 58(h) the taxpayer owed no minimum tax on items of tax preference that did not produce a current tax benefit because available credits would have eliminated tax liability even if the preference items had not been allowed. The court recognized that the effect of the tax preference items was to "free up" for possible use in subsequent years additional credits that otherwise would have been used to reduce tax liability. Section 1.58-9T(a) of the temporary regulations further provides that any credits that, because of such preference items, are not needed for use against regular tax ("freed-up credits"), are required to be reduced under the rules of § 1.58-9T(c) of the temporary regulations.

*Adjustment to Credits*

Section 1.58-9T(c) of the temporary regulations provides that a taxpayer's freed-up credits must be reduced by the additional minimum tax that would have been imposed if a current tax benefit had been derived from preference items that did not actually produce a current tax benefit. The amount of this reduction shall be calculated in the following manner—

(i) Determine the amount of freed-up credits,

(ii) Determine the amount of tax preference items (if any) for which a current tax benefit was derived for the taxable year ("beneficial preferences"), and the amount of preferences for which no current tax benefit was derived for the taxable year ("non-beneficial preferences"), and

(iii) Determine the portion of the total minimum tax on all tax preference items for the taxable year that is attributable to the non-beneficial preferences.

The freed-up credits are then reduced by an amount equal to such portion of the minimum tax.

The regulations include rules necessary to allocate properly the required credit reduction among credits that are of more than one type (*e.g.*, investment tax credits and foreign tax credits) or that were earned in more than one taxable year. These rules take into account the order in which such credits would have been applied to offset the additional tax that would have been imposed if preferences had not been allowed, percentage limitations that would have affected the use of such credits against this additional tax, and the marginal rates at which this additional tax would have been imposed.

Determination of Freed-up Credit

Section 1.58-9T(c)(2)(i) of the temporary regulations provides that to determine the freed-up credits for the taxable year, the first step is to determine the regular tax that would have been imposed if preference items had not been allowed in computing taxable income ("non-preference regular tax"). The second step is to compute the amount of credits that would have been allowed to reduce the non-preference regular tax. The third step is to subtract the amount of credits that were actually allowed to reduce the regular tax for such taxable year from the amount of credits that would have been allowed to reduce non-preference regular tax. The result is the amount of the freed-up credits.

Determination of Beneficial and Non-beneficial Preferences

Section 1.58-9T(c)(3) of the temporary regulations provides the method for determining the amount of tax preferences from which a current tax benefit is derived ("beneficial preferences") and the amount from which no current tax benefit is derived ("non-beneficial preferences") for the taxable year. If the taxpayer's tax liability (after credits) would be the same regardless of whether preference items were allowed to reduce taxable income, then all of the taxpayer's preference items are non-beneficial preference items.

If tax liability (after credits) is less because preference items are allowed to reduce taxable income, then some of these preference items have provided a current tax benefit. In such cases, the non-beneficial preferences are determined by converting the freed-up credits for such taxable year into an amount of taxable income. To make this conversion, freed-up credits are "grossed up" (*i.e.*, divided by the regular tax marginal rate at which such credits would have offset non-preference regular tax) to determine the amount of tax preferences that freed up such credits. The aggregate of these grossed-up amounts is the total amount of non-beneficial preferences for the taxable year.

The freed-up credits are to be grossed up beginning at the lowest marginal tax rate that would have applied to the additional taxable income arising if tax preferences were not allowed. Thus, the

marginal tax rates at which the actual regular tax was imposed shall not be taken into account in grossing up freed-up credit, even if all or a portion of such tax is not offset by credits because of limitations on the allowance of such credits (such as the section 904 limit on foreign tax credits or the section 38(c) limit on investment tax credits). For example, if the first dollar of additional non-preference taxable income would have been taxed at a rate of 46 percent, even if regular tax imposed on taxable income at a 40-percent rate was not offset by credits because of the limitations on investment tax credits under section 38(c).

The amount of beneficial preferences for the taxable year is computed by subtracting the non-beneficial preferences for the taxable year from the total amount of tax preferences for such year.

Determination of the Credit Reduction Amount

Section 1.58–9T(c)(4) of the temporary regulations provides the method for determining the amount of minimum tax attributable to the non-beneficial preferences. This amount is also referred to as the credit reduction amount. The credit reduction amount is determined by computing the amount of minimum tax that would be imposed on all tax preference items for the taxable year if all such preferences had produced a current tax benefit. The minimum tax that is imposed on only beneficial preferences is subtracted from this amount. The result is the minimum tax attributable to the non-beneficial preferences for the taxable year.

Reduction of Freed-up Credits

Section 1.58–9T(c)(5)(i) of the temporary regulations provides that the freed-up credits are reduced by an amount equal to the minimum tax attributable to the non-beneficial preferences ("credit reduction amount"). If the taxpayer only has one type of freed-up credit (*i.e.*, only investment tax credit or only foreign tax credit) and that credit was earned in only one year (the current year or a carryback or carryforward year), then such credit is reduced by the credit reduction amount.

However, if the taxpayer has more than one type of freed-up credit, or the taxpayer's credits are from more than one taxable year, then the credit reduction amount must be allocated either under the exact method of credit reduction, or if an election is made, under the simplified method.

Section 1.58–9T(c)(5)(ii) of the temporary regulations provides that under the exact method of credit reduction, for each type of freed-up credits and for each taxable year within such type from which any such credits are earned, the amount of credit reduction shall be equal to the amount of minimum tax attributable to the non-beneficial preferences that freed up the credits for that type and taxable year. The amount of the credit reduction is computed by multiplying the amount of non-beneficial preferences which freed up credits for each type and taxable year by the minimum tax rate.

In lieu of the exact credit reduction method, taxpayers may elect to use the simplified credit reduction method described in § 1.58–9T(c)(5)(iii)(A). Under the simplified credit reduction method, the amount of freed-up credits for each type of credit and for each taxable year from which such credit is carried over is multiplied by a fraction. The numerator of the fraction is the total credit reduction amount. The denominator is the total amount of freed-up credits. The product of this multiplication is the amount of credit reduction for each type and taxable year of freed-up credit.

Section 1.58–9T(c)(5)(iii)(B) provides that a taxpayer may elect to use the simplified credit reduction method for all taxable years to which these regulations apply by attaching a statement indicating such an election on the amended Federal income tax return or returns applying the adjustments of these regulations. If an election is made for any taxable year, it must be made for all taxable years. Once an election has been made, it can be revoked only with the permission of the Commissioner. Similarly, once returns have been filed applying the exact credit reduction method, an election to apply the simplified method can be made only with the consent of the Commissioner.

Section 1.58–9T(c)(5)(iv) of the temporary regulations provides that under both the exact method and the simplified method, the determination of credit carrybacks and carryforwards to other taxable years is made on the basis of freed-up credits remaining after such reduction, plus any other unused credits. Thus, an amount of freed-up credits equal to the credit reduction amount shall not reduce tax liability in any taxable year. Such disallowance is without regard to whether such credits would otherwise be allowed as a carryback or carryforward. No minimum tax liability shall be due with respect to the non-beneficial preferences for any taxable year.

*Periods of Limitations; Adjustments to Tax Liability*

Section 1.58–9T(e)(2) of the temporary regulations provides that the adjustments described in the temporary regulations shall, in general, apply for purposes of assessing deficiencies or claiming refunds of tax for any taxable year for which the tax liability for such year is affected by these adjustments, provided that the period of limitations under section 6501 has not expired for such taxable year. Therefore, these adjustments generally apply for purposes of assessing deficiencies and refunding any overpayment of tax for all years for which the period of limitations has not expired regardless of whether the period of limitations has expired for the taxable year in which the non-beneficial preferences arose. However, the adjustments contained in these temporary regulations do not apply to reduce freed-up credits otherwise allowable in any year where:

(i) The taxpayer paid minimum tax on all tax preference items arising in the taxable year in which the non-beneficial preference arose;

(ii) The taxpayer has not made a claim for a credit or refund for such minimum tax; and

(iii) The period of limitations for claiming a credit or refund under section 6511 has expired for such taxable year.

*Claim for Credit or Refund*

Section 1.58–9T(e)(3) of the temporary regulations provides that a taxpayer generally pay claim a credit or refund of minimum tax that was paid on non-beneficial preferences. However, such a claim for a credit or refund shall be disallowed to the extent that the taxpayer has reduced tax liability in a taxable year for which the period of limitations has expired by using freed-up credits in excess of the amount that would have been available if the credit reduction required under these regulations had been made. Such a claim must be made by filing an amended return for the taxable year for which such minimum tax was paid. Further, if a claim for credit or refund is filed, amended returns must also be filed for any taxable year for which tax liability would be affected as a result of the reduction, under these regulations, of credits freed up by such non-beneficial preferences.

*Net Operating Losses*

Section 1.58–9T(f) of the temporary regulations has been reserved for the purpose of providing rules relating to the application of the tax benefit rule in cases where tax preference items

provide no tax benefit in the current taxable year because available net operating loss carrybacks or carryforwards would have reduced or eliminated tax liability if the preference items had not been allowed in computing taxable income. The Internal Revenue Service intends to issue additional regulations at a later date which will address the adjustments required in such cases.

**Special Analyses**

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

*Drafting Information*

The principal author of these temporary regulations is William A. Jackson of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**List of Subjects**

*26 CFR 1.101–1—1.58–9*

Income taxes, Tax liability, Tax rates, Credits.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

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

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

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

**Authority:** 26 U.S.C. 7805 * * * Section 1.58–9T is also issued under 26 U.S.C. 58(h).

**Par. 2.** A new § 1.58–9T is added immediately following § 1.58–8 to read as set forth below:

**§ 1.58–9T Application of the tax benefit rule to the minimum tax for taxable years beginning prior to 1987 (Temporary).**

(a) *In general.* For purposes of computing the minimum tax liability imposed under section 56 of the Internal Revenue Code of 1954 (Code), taxpayers are not liable for minimum tax on tax preference items from which no current tax benefit is derived because available credits would have reduced or eliminated the taxpayer's regular tax liability if the preference items had not been allowed in computing taxable income. However, any credits that, because of such preference items, are not needed for use against regular tax ("freed-up credits"), are required to be reduced under the rules of paragraph (c) of this section. For purposes of this section, a taxpayer's regular tax is the Federal income tax liability under subchapter A of Chapter 1 of the Code, not including the minimum tax imposed by section 56. Unless otherwise noted, all references to Internal Revenue Code sections refer to the Internal Revenue Code of 1954.

(b) *Effective date.* The rules of this section are effective for tax preference items which arise in taxable years beginning after December 31, 1976, and before January 1, 1987.

(c) *Adjustment of carryback and carryover credits*—(1) *In general.* A taxpayer's freed-up credits must be reduced by the additional minimum tax that would have been imposed if a current tax benefit had been derived from preference items that did not actually produce a current tax benefit. The amount of this reduction shall be calculated in the following manner—

(i) Determine the amount of freed-up credits,

(ii) Determine the amount of tax prerference items (if any) for which a current tax benefit was derived for the taxable year ("beneficial preferences"), and the amount of preferences for which no current tax benefit was derived for the taxable year ("non-beneficial preferences"), and

(iii) Determine the portion of the total minimum tax on all tax preference items for the taxable year that is attributable to the non-beneficial preferences.

The freed-up credits are then reduced by an amount equal to such portion of the minimum tax.

(2) *Determine freed-up credits.* (i) To determine the freed-up credits for the taxable year, first determine the regular tax that would have been imposed if preference items had not been allowed in computing taxable income ("non-preference regular tax"). Second, compute the amount of credits that would have been allowed to reduce the non-preference regular tax. Third, subtract the amount of credits that were actually allowed to reduce the regular tax for such taxable year from the amount of credits that would have been allowed to reduce non-preference regular tax. The result is the amount of the freed-up credits.

(ii) The following examples illustrate the determination of freed-up credits:

*Example (1).* In 1982 Corporation B has $17.6 million dollars in foreign tax credits available for the taxable year. Assume that the foreign tax credits being used in this example do not exceed the limitation under section 904. If preference items were not allowed in determining regular tax, the regular tax would have been $10.2 million and foreign tax credits used to reduce regular tax would have been $10.2 million. Because of tax preference items, however, B's regular tax is $6.3 million and the amount of foreign tax credits actually used to reduce the regular tax is $6.3 million. The amount of freed-up foreign tax credits is $3.9 million ($10.2 million minus $6.3 million).

*Example (2).* Assume the same facts as in Example (1) except that Corporation B has $7.2 million dollars in foreign tax credits. If preference items were not allowed, the non-preference regular tax would have been $10.2 million and the foreign tax credits used to reduce the regular tax would have been $7.2 million. Because of tax preference items, B's regular tax, however, is $6.3 million, and the foreign tax credits actually used to reduce the regular tax is $6.3 million. The amount of freed-up foreign tax credits is $.9 million ($7.2 million minus $6.3 million).

*Example (3).* In 1983 Corporation C has $500,000 of investment tax credit available. If preference items were not allowed, non-preference regular tax would have been $690,000 and all $500,000 of investment tax credits would have been allowed to reduce non-preference regular tax liability. Because of tax preferences, however, C's actual regular tax is $439,750. As a result of the limitation under section 38(c), only $377,537 of the investment tax credits are allowed to reduce the actual regular tax. Freed-up credits are $122,463 ($500,000 minus 377,537).

(3) *Determination of beneficial and non-beneficial preferences*—(i) *In general.* The amount of tax preferences from which a current tax benefit is derived ("beneficial preferences") and the amount from which no current tax benefit is derived ("non-beneficial preferences") for the taxable year are determined as set forth below.

(ii) *Regular tax liability is the same regardless of preference items.* (A) If the taxpayer's tax liability (after credits) would be the same regardless of whether preference items were allowed to reduce taxable income, then all of the taxpayer's preference items are non-beneficial preference items.

(B) The following example illustrates the rule set forth in paragraph (C)(3)(ii)(A) of this section. This example assumes that foreign tax credits being used do not exceed the limitation under section 904.

*Example (4).* Assume the facts in Example (1). All of B's $17.6 million of credits are foreign tax credits. The total amount of B's tax preference items is $8.4 million. B's non-preference regular tax is $10.2 million and, reduced by foreign tax credits, is zero. B's actual regular tax is $6.3 million, and, reduced by foreign tax credits, is zero. Since the amount of credits that would have been allowed to offset the non-preference regular tax would have reduced such tax to an amount ($0) equal to the actual regular tax liability ($0), B received a tax benefit from none of the $8.4 million of tax preferences and therefore all of these preferences are non-beneficial preferences.

(iii) *Regular Tax liability differs because of preference items.* If tax liability (after credits) is less because preference items are allowed to reduce taxable income, then some of these preference items have provided a current tax benefit. In such cases, the amount of beneficial and non-beneficial preferences are determined as follows:

(A) *Non-beneficial preferences.* (*1*) The non-beneficial preferences are determined by converting the freed-up credits for such taxable year into an amount of taxable income. To make this conversion, freed-up credits are "grossed up" (*i.e.*, divided by the regular tax marginal rate at which such credits would have offset non-preference regular tax) to determine the amount of tax preferences that freed up such credits.

For purposes of this calculation, the 5-percent addition to tax provided by section 11(b) shall be included in determining the marginal rate. The aggregate of these grossed-up amounts is the total amount of non-beneficial preferences for the taxable year.

(*2*) The freed-up credits shall be grossed up beginning at the lowest marginal tax rate that would have applied to the additional taxable income arising if tax preferences were not allowed. Thus, the marginal tax rates at which the actual regular tax was imposed shall not be taken into account in grossing up freed-up credits, even if all or a portion of such tax is not offset by credits because of limitations on the allowance of such credits (such as the section 904 limit on foreign tax credits or the section 38(c) limit on investment tax credits). For example, if the first dollar of additional non-preference taxable income would have been taxed at a rate of 46 percent, then freed-up credits shall be grossed up at 46 percent, even if regular tax imposed on taxable income at a 40-percent rate was not offset by credits because of the limitations on investment tax credits under section 38(c). *See* Examples (12) and (13) in paragraph (d) of this section for illustrations of the gross up of freed-up credits in cases where limitations apply to the amount of credit allowed to offset actual regular tax.

(*3*) The following example illustrates the gross up of freed-up credits to determine non-beneficial preferences. This example assumes that foreign tax credits being used do not exceed the limitation under section 904.

*Example (5).* Corporation L has the following items for the 1985 taxable year:

| | |
|---|---|
| Actual taxable income | $90,000 |
| Regular tax | 21,750 |
| Available credits: | |
| Foreign tax credits for 1985 | 15,000 |
| Foreign tax credits carried forward from 1984 | 25,000 |
| Investment tax credits carried forward from 1984 | 20,000 |
| Total | 60,000 |
| Credit allowed to offset actual regular tax: | |
| Foreign tax credits for 1985 | 15,000 |
| Foreign tax credits carried froward from 1984 | 6,750 |
| Total | 21,750 |
| Actual regular tax liability | -0- |
| Preferences | 110,000 |
| Taxable income for 1985 determined as though preferences were not allowed | 200,000 |
| Non-preference regular tax | 71,750 |
| Credits allowed to offset non-preference regular tax: | |
| Foreign tax credits for 1985 | 15,000 |
| Foreign tax credits carried forward from 1984 | 25,000 |
| Investment tas credits carried forward from 1984 | 20,000 |
| Total | 60,000 |
| Non-preference regular tax liability | 11,750 |

The freed-up credits for 1985 are $38,250 ($60,000 minus $21,750).

The non-preference regular tax of $71,750 is determined by applying the regular tax rates set forth in section 11 (b) to the $200,000 of taxable income as follows:

| Taxable income | | Rate | | Tax |
|---|---|---|---|---|
| $25,000 | x | .15 | = | $3,750 |
| 25,000 | x | .18 | = | 4,500 |
| 25,000 | x | .30 | = | 7,500 |
| 25,000 | x | .40 | = | 10,000 |
| 100,000 | x | .46 | = | 46,000 |
| $200,000 | | | | 71,750 |

Thus, for purposes of determining the non-beneficial preferences, freed-up credits are grossed up as follows:

The credits allowed against the regular tax and the freed-up credits are treated as offsetting non-preference regular tax in the same order as such credits would have been allowed to offset such tax, beginning at the lowest marginal tax rate. The freed-up credits are grossed up beginning at the lowest marginal tax rate at which additional taxable income would have been taxed if preferences were not allowed. Thus, in this example freed-up credits are grossed up beginning at 40 percent, and the amount of L's non-beneficial preferences for the 1985 taxable year is $84,456.

| Type | Credit allowed against regular tax | Freed-up credit | Divided by tax rate | | Non-beneficial preferences |
|---|---|---|---|---|---|
| FTC (85) | $3,750 | | .15 | | |
| | 4,500 | | .18 | | |
| | 6,750 | | .30 | | |
| FTC (84) | 750 | | .30 | | |
| | 6,000 | | .40 | | |
| | | $14,250 | .46 | = | 30,978 |
| ITC (84) | | 20,000 | .465 | = | 43,478 |
| | 21,750 | 38,250 | | | 84,456 |

Foreign tax credit = FTC (Year)
Investment tax credit = ITC (Year)

(b) *Beneficial preferences.* The amount of beneficial preferences for the taxable year is computed by substracting the non-beneficial preferences for the taxable year from the total amount of tax preferences for

such year. This rule may be illustrated by the following example:

*Example (6).* Assume the same facts as in Example (5). The amount of L's beneficial preferences for 1985 is $25,544 (total preferences of $110,000, minus non-beneficial preferences of $84,456).

(4) *Determine the minimum tax attributable to non-beneficial preferences.* (i) The portion of the minimum tax that is attributable to the non-beneficial preferences is computed as follows—

(A) Compute the minimum tax that would be imposed on all tax preference items for the taxable year if all of the preferences had produced a tax benefit.

(B) Compute the minimum tax that would be imposed on the beneficial preferences if these were the taxpayer's only preferences. (This is the amount of minimum tax actually imposed for the taxable year.)

(C) Subtract the amount computed in (B) from the amount computed in (A). The result is the minimum tax attributable to the non-beneficial preferences for the taxable year. This amount is sometimes referred to hereinafter as the "credit reduction amount".

(ii) The following examples illustrate determination of the credit reduction amount.

*Example (7).* Assume the facts in Example (4) above. Since B has $8.4 million in total preference items and no regular tax liability, the minimum tax on that amount would be $1,258,500 (($8.4 million minus $10,000) multiplied by .15). None of the preference items is a beneficial preference. Thus, the minimum tax attributable to non-beneficial preferences (and therefore, the credit reduction amount) is $1,258,500.

*Example (8).* Assume the facts in Example (5) above. The minimum tax on L's total preference items of $110,000 would be $15,000 (($110,000 minus $10,000) multiplied by .15). Since the amount of non-beneficial preferences is $84,456, the amount of L's beneficial preferences for 1985 is $25,544 ($110,000 minus $84,456). The minimum tax on L's beneficial preferences of $25,544 is $2,332 (($25,544 minus $10,000) multiplied by .15). (This is the amount of minimum tax imposed for 1985.) The minimum tax attributable to non-beneficial preference items (and therefore, the credit reduction amount) is $12,668 ($15,000 minus $2,332).

(5) *Reduction of freed-up credits*—(i) *In general.* The freed-up credits are reduced by an amount equal to the minimum tax attributable to the non-beneficial preferences ("credit reduction amount"). If the taxpayer has only one type of freed-up credit (*i.e.*, only investment tax credit or only foreign tax credit) and that credit was earned in only one year (the current year or a carryback or carryforward year), then the credit is reduced by the credit reduction amount. This rule may be illustrated by the following example:

*Example (9).* Assume the facts in Example (7) above. Further assume that all of the $3.9 million of freed-up credits are foreign tax credits that arise in the same year and that otherwise would be carried forward. Since the entire amount of B's tax preferences are non-beneficial preferences, the minimum tax of $1,258,500 that would be imposed on the total tax preferences is the credit reduction amount. Thus, B's $3.9 million of freed-up foreign tax credits is reduced by $1,258,500. The foreign tax credit carried forward from 1982 is $10,041,500. This amount is the sum of $2,641,500 (the freed-up foreign tax credit of $3,900,000, reduced by the credit reduction amount of $1,258,500), plus $7.4 million (the foreign tax credit that would have been carried over even if tax preference items had not been allowed).

However, if the taxpayer has more than one type of freed-up credit, or the taxpayer's freed-up credits are from more than one taxable year, then the credit reduction amount must be allocated under the exact method described in paragraph (c)(5)(ii) of this section, unless an election is made under paragraph (c)(5)(iii) of this section to use the simplified method.

(ii) *Exact method.* For each type of freed-up credits and for each taxable year within such type from which any such credits are earned, the amount of credit reduction shall be equal to the amount of minimum tax attributable to the non-beneficial preferences that freed up the credits for that type and taxable year. The amount of the credit reduction is computed by multiplying the amount of non-beneficial preferences which freed up credits for each type and taxable year by the minimum tax rate. For purposes of this computation, if the amount of the taxpayer's minimum tax exemption for the taxable year (as determined under section 56(a)) exceeds the amount of the taxpayer's beneficial preferences, such excess exemption shall reduce the amount of non-beneficial preferences to be multiplied by the minimum tax rate. The non-beneficial preferences shall be reduced by any such excess exemption in the same order in which the credits that were freed up by such preferences would have been allowed to offset tax. Thus, for example, any excess exemption shall first reduce non-beneficial preferences that freed up foreign tax credits. Any such excess exemption remaining after reducing non-beneficial preferences that freed up foreign tax credits to zero would then be used to reduce the non-beneficial preferences that freed up investment tax credits.

(iii) *Simplified method*—(A) *Description of method.* In lieu of the exact credit reduction method described in paragraph (c)(5)(ii) of this section, taxpayers may elect to use the simplified credit reduction method. Under the simplified credit reduction method, the amount of freed-up credits for each type of credit and for each taxable year in which such credit is earned is multiplied by a fraction. The numerator of the fraction is the total credit reduction amount as determined in paragraph (c)(4)(i)(C) of this section. The denominator is the total amount of freed-up credits as determined in paragraph (c)(2)(i) of this section. The product of this multiplication is the amount of credit reduction for each type and taxable year of freed-up credit.

(B) *Election to use simplified method.* A taxpayer may elect to use the simplified credit reduction method for all taxable years to which this section applies by attaching a statement indicating such an election on the amended Federal income tax return or returns applying the adjustments of this section. If an election is made for any taxable year, it must be made for all taxable years. Once an election has been made, it can be revoked only with the permission of the Commissioner. Similarly, once returns have been filed applying the exact credit reduction method, an election to apply the simplified method can be made only with the consent of the Commissioner.

(iv) *Effect of credit reduction on credit carrybacks and carryforwards.* Under both the exact method and the simplified method, the determination of credit carrybacks and carryforwards to other taxable years is made on the basis of freed-up credits remaining after such reduction, plus any other unused credits. Thus, an amount of freed-up credits that is equal to the credit reduction amount shall not be allowed to reduce tax liability in any taxable year. Such disallowance is without regard to whether such credits would otherwise be allowed as a carryback or carryforward. No minimum tax liability shall be due with respect to the non-beneficial preferences for any taxable year.

(v) *Examples.* The following examples illustrate reduction of freed-up credits.

*Example (10).* Assume the facts in Example (8) above. The credit reduction amount for 1985 is $12,668, the amount of minimum tax attributable to L's non-beneficial preferences. This amount is allocated to reduce each category of freed-up credit and to each year from which such credit is carried over. L's $38,250 of freed-up credits consists of $18,250 of foreign tax credits carried froward from

1984, which were freed up by $40,978 of non-beneficial preferences, and $20,000 of investment tax credits carried forward from 1984, which were freed up by $43,478 of non-beneficial preferences.

(a) The apportionment of this credit reduction amount to each category of freed-up credit and each taxable year from which such credits are carried over is determined as follows under the exact credit reduction method:

(i) Foreign tax credits carried forward from 1984:

Non-beneficial preferences that freed up 1984 FTC × .15 = Credit reduction of 1984 FTC

$40,978 × .15 = $6,146

(ii) Investment tax credits carried forward from 1984:

Non-beneficial preferences that freed up 1984 ITC × .15 = Credit reduction of 1984 ITC

$43,478 × .15 = $6,522

Thus, the foreign tax credits from 1984 that are carried forward to 1986 are $12,104 ($18,250 minus $6,146). The investment tax credits from 1984 that are carried forward to 1986 are $13,478 ($20,000 minus $6,522).

(b) The reduction of the freed-up credit under the simplified credit reduction method is as follows:

(i) Foreign tax credit carried forward from 1984:

$$\text{Freed-up foreign tax credits from 1984} \times \frac{\text{Credit reduction amount}}{\text{Total freed-up credit}} = \text{Credit reduction allocated to freed-up foreign tax credits carried forward from 1984}$$

$$\$18,250 \times \frac{\$12,668}{\$38,250} = \$6,044$$

(ii) Investment tax credits carried forward from 1984:

$$\text{Freed-up investment tax credits from 1984} \times \frac{\text{Credit reduction amount}}{\text{Total freed-up credit}} = \text{Credit reduction allocated to freed-up investment tax credits carried forward from 1984}$$

$$\$20,000 \times \frac{\$12,668}{\$38,250} = \$6,624$$

Thus, under the simplified credit reduction method, L has $12,206 of foreign tax credits for 1984 ($18,250 minus $6,044) that are carried forward to 1986, and $13,376 of investment tax credits for 1984 ($20,000 minus $6,624) that are carried forward to 1986.

*Example (11).* Assume the same facts as in Example (10), except that the foreign tax credits available for use in 1985 include $10,750 in credits carried forward from 1980 and $14,250 in credits carried forward from 1984, rather than $25,000 carried forward from 1984. Thus, $4,000 of the freed-up foreign tax credit is carried over from 1980. The other $14,250 of freed-up foreign tax credit is carried over from 1984. The non-beneficial preferences that freed up the 1980 foreign tax credit are $10,000. The non-beneficial preferences that freed up the 1984 foreign tax credit are $30,978. Under the exact credit reduction method, the credit reduction amounts for each of these credits are determined as follows:

(a) Foreign tax credit carried forward from 1980:

$10,000 × .15 = $1,500

(b) Foreign tax credit carried forward from 1984:

$30,978 × .15 = $4,646

Thus, the foreign tax credit from 1984 that is carried forward to 1986 is $9,604 ($14,250 minus $4,646). Since the foreign tax credit from 1980 expires after 1985, none of that credit is carried forward to 1986.

(d) *Examples.* The following examples are comprehensive illustrations of the adjustments described in paragraph (c) of this section:

*Example (12).* This example illustrates the operation of the credit reduction adjustment when the amount of foreign tax credit allowed is subject to the overall limitation under section 904. For purposes of this example, assume that Corporation X has the following items for the 1984 taxable year:

| | |
|---|---|
| Taxable income (determined as though preferences were not allowed) | $140,000 |
| From foreign sources | 70,000 |
| Foreign tax credits from 1984 | 5,000 |
| Foreign tax credits from 1983 | 7,000 |
| Actual taxable income | 50,000 |
| From foreign sources | 25,000 |

The credit reduction adjustment and minimum tax liability for the taxable year are determined as follows:

| | |
|---|---|
| 1. Taxable income (determined as though preferences were not allowed) | $140,000 |
| 2. Tax preferences for 1984 | 90,000 |
| 3. Taxable income (line 1 minus line 2) | 50,000 |
| 4. Regular tax on line 3 amount (actual regular tax) before credits: | |
| 25,000 × .15 = $3,750 | |
| 25,000 × .18 = 4,500 | 8,250 |
| 5. Foreign tax credits allowed against regular tax (limited to 50% of actual regular tax under sec. 904)—1984 foreign tax credits | 4,125 |
| 6. Regular tax after credits (line 4 minus line 5) | 4,125 |
| 7. Regular tax on line 1 amount (non-preference regular tax) before credits: | |
| $25,000 × .15 = $3,750 | |
| 25,000 × .18 = 4,500 | |
| 25,000 × 0.3 = 7,500 | |
| 25,000 × 0.4 = 10,000 | |
| 40,000 × .46 = 18,400 | 44,150 |
| 8. Foreign tax credits allowed against non-preference regular tax: | |
| 5,000 (1984 foreign tax credits) | |
| 7,000 (1983 foreign tax credits) | 12,000 |
| (the allowed credits do not exceed the section 904 limitation of $22,075) | |
| 9. Non-preference regular tax after credits (line 7 minus line 8) | 32,150 |
| 10. Freed-up credits (line 8 minus line 5): | |
| 1984 foreign tax credits $5,000 (4,125) | $875 |
| 1983 foreign tax credits $7,000 (0) | 7,000 |
| Total | $7,875 |

11. Non-beneficial preferences are computed as set forth in the table below. Under this computation, non-beneficial preferences are considered to free up credits that would have offset non-preference regular tax beginning at the lowest tax rates at which income that was offset by tax preferences otherwise would have been subject to regular tax. In this case, income that was offset by tax preferences would have been taxed beginning at the 30 percent marginal tax rate.

| Type | Freed-up credit | Divided by tax rate | Non-beneficial preferences |
|---|---|---|---|
| FTC (84) | $875 | .30 | $2,917 |
| FTC (83) | 6,625 | .30 | 22,083 |
| | 375 | .40 | 938 |
| | 7,875 | | 25,938 |
| Total non-beneficial preferences | | | 25,938 |

12. Beneficial preferences (line 2 minus line 11) ..... 64,062
13. Minimum tax on total tax preferences ((line 2 minus the greater of line 6 or $10,000) × .15) ..... 12,000
14. Minimum tax on beneficial preferences ((line 12 minus the greater of line 6 or $10,000) × .15) .. 8,109
15. Credit reduction amount (line 13 minus line 14) ..... 3,891
16. Reduction of freed-up credits under the exact method (subtotals of line 11 multiplied by .15):
    (a) 1984 foreign tax credits: $2,917 × .15 = $438
    (b) 1983 foreign tax credits: ($22,083 + $938) × .15 = $3,453
    (c) Total credit reduction ..... 3,891

**Note:** If X had elected to use the simplified credit reduction method, the amount of credit reduction would be determined by multiplying the amount of freed-up credit in each category and taxable year by the following ratio:

$$\frac{\text{credit reduction amount}}{\text{total freed-up credit}} = \frac{\$3,891}{\$7,875} = .494$$

Under this method, the 1984 freed-up foreign tax credits would be reduced by $433 ($875 × .494) and the 1983 freed-up foreign tax credits would be reduced by $3,458 ($7,000 × .494).

17. Freed-up credits after reduction under the exact method (line 10 subtotal minus line 16 subtotals):
    (a) 1984 foreign tax credits (875 minus 438) ..... 437
    (b) 1983 foreign tax credits (7,000 minus 3,453) ..... 3,547

Thus, assuming that Corporation X did not elect to use the simplified method, Corporation X will carryover $437 of 1984 foreign tax credits to 1985 and $3,547 of 1983 foreign tax credits to 1985.

Had Corporation X elected to use the simplified method, freed-up credits after reduction would be as follows:

(a) 1984 foreign tax credits (875 minus 433) ..... 442
(b) 1983 foreign tax credits (7,000 minus 3,458) ..... 3,542

*Example 13.* Corporation X has the following items for its 1985 taxable year:

Taxable income (determined as though preferences were not allowed) ..... $1,500,000
1984 investment tax credits ..... 400,000
1985 investment tax credits ..... 100,000
Actual taxable income ..... 1,000,000

The credit reduction and minimum tax of X for 1985 are determined as follows:

1. Taxable income determined as though preferences were not allowed ..... $1,500,000
2. Tax preferences for 1985 ..... 500,000
3. Taxable income (line 1 minus line 2) ..... 1,000,000
4. Regular tax on line 3 amount (actual regular tax) before credits:
   $25,000 × .15 = $3,750
   25,000 × .18 = 4,500
   25,000 × .30 = 7,500
   25,000 × .40 = 10,000
   900,000 × .46 = 414,000 ..... 439,750
5. Investment tax credits allowed (limited under section 38(c) to $25,000 of net tax liability, plus 85 percent of net tax liability in excess of $25,000 ..... 377,537
6. Regular tax after credits (line 4 minus line 5) ..... 62,212
7. Regular tax on line 1 amount (non-preference regular tax) before credits:
   $25,000 × .15 = $3,750
   25,000 × .18 = 4,500
   25,000 × .30 = 7,500
   25,000 × .40 = 10,000
   900,000 × .46 = 414,000
   405,000 × .51 = 206,550
   95,000 × .46 = 43,700 ..... 690,000
8. Investment tax credits allowed against non-preference regular tax ..... 500,000
9. Non-preference regular tax after credits (line 7 minus line 8) ..... 190,000
10. Freed-up credits (line 8 minus line 5):
    1984 investment tax credit $400,000 (377,537) 22,463
    1985 investment tax credit $100,000 (0) 100,000
    Total ..... $122,463

11. Non-beneficial preferences are computed as set forth in the table below. Under this computation, non-beneficial preferences are considered to free up credits that would have offset non-preference regular tax beginning at the lowest tax rates at which income that was offset by tax preferences otherwise would have been subject to regular tax. In this case, income that was offset by tax preferences would have been taxed beginning at the 51 percent marginal tax rate. Although some of the income offset by preferences would be taxed at the 46 percent marginal rate (because taxable income in excess of $1,405,000 is not subject to the 5 percent addition to tax on taxable income in excess of $1 million), the 51 percent marginal rate is taken into account first.

| Type | Freed-up credit | Divided by tax rate | Non-beneficial preferences |
|---|---|---|---|
| ITC (84) | $22,463 | .51 | $44,045 |
| ITC (85) | 100,000 | .51 | 196,078 |
| | 122,463 | | 240,123 |
| Total non-beneficial preferences | 240,123 | | |

12. Beneficial preferences (line 2 minus line 11) ..... 259,877
13. Minimum tax on total tax preferences ((line 2 minus the greater of line 6 or $10,000) × .15) ..... 65,668
14. Minimum tax on beneficial preferences ((line 12 minus the greater of line 6 or $10,000) × .15) ..... 29,650
15. Credit reduction amount (line 13 minus line 14) ..... 36,018
16. Reduction of freed-up credits under the exact method (subtotals of line 11 multiplied by .15):
    (a) 1984 investment tax credits: $44,045 × .15 = $6,607
    (b) 1985 investment tax credits: $196,078 × .15 = $29,411
    (c) Total credit reduction ..... 36,018
17. Freed-up credits after reduction (assuming that Corporation X does not elect the simplified method):
    (a) 1984 investment credit ($22,463 minus $6,607) ..... 15,856
    (b) 1985 investment credit ($100,000 minus $29,411) ..... 70,589

(e) *Miscellaneous rules*—(1) *Investment Credit Recapture.* If during any taxable year, property to which section 47 applies is disposed of, then for purposes of determining any increase in tax under section 47 for such year, the amount of any reduction under this section of freed-up section 38 credit which was earned in the year the property was placed in service shall be treated as a credit that was allowed in a prior taxable year.

*Example (14).* Assume corporation D places property in service in 1983 that generates investment tax credits of $10,000. D earned no other investment tax credits in 1983. None of the investment tax credits are used to reduce tax liability in 1983 or any prior years. In 1984, D uses $1,000 of this credit to reduce regular tax liability. In addition, D has items of tax preference in 1984. However, under section 58(h), D is not liable for minimum tax on any of these preference items because none of these preference items produced a tax benefit in 1984. As a result, an adjustment is made under the provisions of § 1.58–9T and the investment tax credit carryforward from 1983 is reduced by $4,000. Thus, D has an investment tax credit carryforward of $5,000 that is attributable to the property placed in

service in 1983. In 1986, the property is disposed of and the investment tax credits earned in 1983 are recomputed as required under section 47. This recomputation results in a reduction of $6,000 of the investment tax credits earned in 1983. D must now adjust its 1983 investment tax credit carryforward under section 47(a)(6) by reducing this carryforward to zero. In addition, D has an additional tax liability of $1,000 for 1986.

(2) *Period of limitations; adjustments to tax liability.* (i) The adjustments described in this section shall, in general, apply for purposes of assessing deficiencies or claiming refunds of tax for any taxable year for which the tax liability is affected by the adjustments of this section, provided that the period of limitations under section 6501 has not expired for such taxable year. Therefore, these adjustments generally apply for purposes of assessing deficiencies and refunding any overpayment of tax for all years for which the period of limitations has not expired regardless of whether the period of limitations has expired for the taxable year in which the non-beneficial preferences arose.

(ii) However, the adjustments of this section do not apply to reduce otherwise allowable credits that were freed up by such non-beneficial preferences where:

(A) The taxpayer paid minimum tax on all tax preference items arising in the taxable year in which the non-beneficial preferences arose;

(B) The taxpayer has not made a claim for a credit or refund for such minimum tax; and

(C) The period of limitations for claiming a credit or refund under section 6511 has expired for such taxable year.

(iii) Further, if—

(A) The taxpayer never paid minimum tax attributable to non-beneficial preferences,

(B) Credits that were freed up by such preferences were used to reduce tax liability for a taxable year for which the period of limitations has expired, and

(C) Credits so used exceed the amount of credits that would have been available if the credit reduction required under this section with respect to such preferences had been made,

then the taxpayer shall be liable for the minimum tax equal to the amount of credits so used, provided the period of limitations has not expired for the taxable year in which preferences arose.

(3) *Claims for credit or refund.* A taxpayer may claim a credit or refund of minimum tax that was paid on non-beneficial preferences. However, such a claim for a credit or refund shall be disallowed to the extent that the taxpayer has reduced tax liability in a taxable year for which the period of limitations has expired by using freed-up credits in excess of the amount that would have been available if the credit reduction required under this section had been made. Such claim must be made by filing an amended return for the taxable year for which such minimum tax was paid. Further, if a claim for credit or refund is filed, amended returns must also be filed for any taxable year for which tax liability would be affected as a result of the reduction, under this section, of credits freed up by such non-beneficial preferences. See section 6511 and the regulations thereunder regarding the period of limitations for claiming a credit or refund.

(4) *Carryforwards of foreign tax credit to taxable years after 1986.* In the case of foreign tax credit carryforwards to taxable years beginning after December 31, 1986, reductions in such credits required under this section shall apply for purposes of computing the alternative minimum tax foreign tax credit under section 59(a) of the Internal Revenue Code of 1986 as well as for purposes of computing the foreign tax credit for regular tax purposes.

(5) *Credit carrybacks.* If credit carrybacks increase the amount of credits for a taxable year, the adjustments described in this section shall be recomputed taking into account the additional credits. This rule may be illustrated by the following examples:

*Example (15).* Assume that in 1981, corporation D has actual taxable income of $72,500 and regular tax before credits of $15,000. Also assume that, in computing actual regular taxable income, D made use of $36,739 of tax preference items, so that D's taxable income determined as though preference were not allowed would be $109,239. D's non-preference regular tax before credits is $30,000. D earned $25,000 of foreign tax credits in 1981, none of which exceed the limitation under section 904 determined using either actual regular taxable income or the non-preference taxable income.

These credits reduce actual regular tax to zero ($0) and would have reduced non-preference regular tax to $5,000 ($30,000 minus $25,000). Thus, D has freed-up foreign tax credits from 1981 of $10,000 ($25,000 minus $15,000). Pursuant to the adjustments required under this section, D determines that its credit reduction amount is $3,843 and reduces its freed-up credit (and its credit carryover) from 1981 to $6,157 ($10,000 minus $3,843). D also pays minimum tax of $167 on $11,114 of beneficial preferences ([$11,114 minus $10,000) multiplied by .15).

In 1982, D earns additional foreign tax credits. After application of the foreign tax credit carryback rules, D would have $5,000 of 1982 foreign tax credits available for use in 1981. D must recalculate the adjustments required under this section by treating $5,000 of foreign tax credit from 1982 as carried back and (assuming that these credits do not exceed the limitation under section 904) used to reduce non-preference regular tax liability in 1981 to zero ($0). That is, $5,000 of the foreign tax credits earned in 1982 are treated as credits freed up because of D's tax preference items in 1981. Pursuant to the rules set forth herein, D must take into account the foreign tax credits from both 1981 and 1982 in determining to what extent a tax benefit was derived from the preference items used to determine actual regular tax liability in 1981 and in computing the credit reduction amount. When the $5,000 of foreign tax credits from 1982 are considered, all preferences become non-beneficial preferences, and the credit reduction amount is $4,010. Assuming that D elects the simplified method, the 1981 freed-up credits and the 1982 freed-up credits will each be reduced by the following percentage:

$$\frac{\text{4,010 (credit reduction amount)}}{\text{15,000 (total freed up credits)}} = .2673$$

The 1981 freed-up foreign tax credits of $10,000 are thus reduced by $2,673 ($10,000 multiplied by .2673), to $7,327 and the 1982 freed-up foreign tax credits of $5,000 are reduced by $1,334 ($5,000 multiplied by .2673) to $3,666. D also files a claim for credit or refund of the $167 of minimum tax paid in 1981.

*Example (16).* In 1985, corporation E's non-preference regular taxable income is $25,000. E has no available credits. It pays zero in regular tax, however, because of $25,000 in preference items. E paid $2,250 of minimum tax on these preferences ([$25,000 minus $10,000) multiplied by .15). In 1986, E has additional investment tax credits. After application of the investment tax credit carryback rules, E would have $1,000 investment tax credit from 1986 available for use in 1985. E must recompute the adjustments required under this section by treating $1,000 of these 1986 investment tax credits as carried back and used to reduce non-preference regular tax liability for 1985. Pursuant to the rules of this section, all of these $1,000 of credits are freed-up credits. Non-beneficial preferences are $6,667 ($1,000 grossed up at a 15 percent regular tax rate). Beneficial preferences are $18,333 ($25,000 minus $6,667). Minimum tax on all preferences would be $2,250 ([$25,000 minus $10,000) multiplied by .15); minimum tax on beneficial preferences would be $1,250 ([$18,333 minus $10,000) multiplied by .15) Minimum tax attributable to the non-beneficial preferences is thus $1,000 ($2,250 minus $1,250), which is the credit reduction amount. E thus reduces the $1,000 of credits carried back to 1985 to zero. Under the rules of this section, the amount of minimum tax due for 1985 is redetermined. It is equal to the minimum tax on beneficial preferences, which, as described above, is $1,250. Because E paid minimum tax of $2,250 in 1985, E files a claim for credit or refund for $1,000 of the minimum tax paid in 1985.

(f) *Treatment of net operating losses.* [Reserved]

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

Par. 4. Section 602.101(c) is amended by adding in the appropriate place in the table:

" § 1.58–9T (c)(5)(iii)(B)..... 1545–1093."
" § 1.58–9T (e)(3)..... 1545–1093."

There is need for immediate guidance with the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

Michael J. Murphy,
*Acting Commissioner of Internal Revenue.*

Approved: March 16, 1989.

Dennis Earl Ross,
*Acting Assistant Secretary of the Treasury.*

[FR Doc. 89–10764 Filed 5–4–89; 8:45 am]
BILLING CODE 4830–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 369

**[DoD Directive 5105.2]**

### Delegation of Authority to Deputy Secretary of Defense

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** 32 CFR Part 372 is revised to provide for the delegation of authority from the Secretary of Defense to the Deputy Secretary of Defense empowering him to exercise the full range of statutory and administrative powers of the Secretary's office.

**EFFECTIVE DATE:** April 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. R. Kennedy, Office of the Director for Administration and Management, Washington, DC 20301–1155, telephone 202–695–4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 369**

Organization and function (government agencies).

Accordingly, 32 CFR Part 369 is revised to read as follows:

## PART 369—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

Authority: 10 U.S.C. 113.

**§ 369.1 Purpose.**

(a) This document revises 32 CFR Part 369.

(b) In accordance with the authorities contained in 10 U.S.C. 113, I hereby delegate to Deputy Secretary of Defense Donald J. Atwood, Jr., full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(c) The all-inclusive authority delegated herein may not be redelegated in toto; however, the Deputy Secretary is authorized to make specific redelegations, as required.

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

May 1, 1989.

[FR Doc. 89–10772 Filed 5–4–89; 8:45 am]
BILLING CODE 3810–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–3563–7]**

### Approval and Promulgation of Implementation Plans; State of Texas; Alternate Emission Reduction Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This notice approves the State of Texas alternate emission reduction plan for the Continental Can Company, U.S.A. (Continental Can) can coating plant in Longview, Texas. The plan requires Continental Can to adopt plantwide averaging of emission limits for can coating operations as an alternate emission reduction of volatile organic compounds (VOC) by December 31, 1985. The use of daily weighted plantwide averaging is consistent with EPA's policy for compliance with VOC emission limitations for can coating operations as outlined in the December 8, 1980, **Federal Register** notice (45 FR 80824). EPA is approving the revision because it meets the requirements for can coating operations and does not interfere with the attainment of the National Ambient Air Quality Standards (NAAQS) for Ozone in Gregg County, Texas.

**DATE:** This action will be effective on July 5, 1989, unless notice is received by June 5, 1989, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–A), 1445 Ross Avenue, Dallas, Texas 75202–2733.
Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.
Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Gregg Guthrie, Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214, or (FTS) 255–7214. Reference docket file number 85–TX–05.

**SUPPLEMENTARY INFORMATION:** The Continental Can Company operates a can manufacturing plant in Longview (Gregg County), Texas. The facility is subject to the requirements of Texas Regulation V, Section 115.191(7)(B). Section 115.191(7)(B) applies to can coating operations and sets limitations on volatile organic compound emissions that must be met after December 31, 1982. In specific, the affected operations and their limitations are as follows:

| Affected Operation | VOC emission limitation | |
|---|---|---|
| | Pounds per gallon | Kg. per liter |
| Sheet basecoat (exterior and interior) and over-varnish | 2.8 | 0.34 |
| Two-piece can exterior (base-coat and over-varnish) | 2.8 | 0.34 |
| Two- and three-piece can interior body spray, two-piece can exterior end (spray or roll coat) | 4.2 | 0.51 |
| Three-piece can side-seam spray | 5.5 | 0.66 |
| End sealing compound | 3.7 | 0.44 |

On December 8, 1980, the EPA published a policy memorandum in the **Federal Register** (45 FR 80824) that described the acceptable use of plantwide averaging of VOC emissions in can coating operations. The policy requires use of a daily weighted average, the use of total actual

emissions based on weight of VOC per gallon solids used, and the keeping of available records as necessary to ensure compliance.

On July 25, 1985, the Governor of Texas, after adequate notice and public hearing, submitted a revision to the Texas SIP. Specifically, the State submitted an alternate emission reduction plan for Continental Can in Longview, Texas. The revision allows Continental Can to use a plantwide average on a daily basis to determine compliance with Texas Regulation V, Section 115.191.

Gregg County is a rural ozone nonattainment area located in the Longview-Marshall metropolitan statistical area (MSA). As a rural nonattainment county, EPA required the adoption of regulations specified in the Group I and II Control Techniques Guideline (CTG) documents for major sources located in the County. The rural area was not required to submit a demonstration of attainment.

The Longview-Marshall MSA was identified as one of the potential 1988 SIP Call areas in Appendix A of the proposed Post-1987 Ozone/Carbon Monoxide strategy that was published in the **Federal Register** on November 24, 1987. A SIP Call was not issued for this MSA on May 26, 1988, because 1985–1987 ambient monitoring data revealed a design value of 0.12 ppm and a calculated expected exceedance of 0.70 violations per year. However, insufficient data capture has prevented Gregg County from being officially redesignated to an attainment status for ozone.

The State's submittal closely followed the format suggested by EPA's December 8, 1980, policy memorandum. Additional material obtained from the State on November 21, 1986, outlines the proper use of weighted averages to determine compliance as well as the recordkeeping requirements. Specifically, the company shall maintain records of coating and solvent characteristics, and daily consumption sufficient for the TACB or EPA to determine compliance. Compliance is determined for any 24-hour period based on total actual emissions calculated from daily units of production (e.g., number of each type of can, sheet, or end), application rates of each coating (e.g., gallons/units of production), solvent and solids content of each coating. The total emissions are then compared to the total allowable emissions assuming each coating complied with the applicable emission limitations. The recordkeeping format allows use of a standardized equation to express the weight of VOC per gallon of coating (less water) in terms of weight of VOC per gallon of coating solids. The weight of VOC per gallon of coating is based on a certified analysis of each coating given to the user by the supplier. This analysis should be verifiable by laboratory analysis. For purposes of emission limitation compliance, VOC content of coatings is the responsibility of the user.

The company is required to keep daily detailed records in a format that allows simple and accurate verification and is available for compliance certification and possible enforcement action.

The company has developed a computer program based on the requirements of the **Federal Register** notice cited above. This will aid calculation of actual and allowable emissions as well as aid scheduling of production to comply with the State's Regulation V, Section 115.191.

### Final Action

By this notice EPA is approving the State's plan to allow an alternate emission reduction plan at the Continental Can Company, U.S.A., can coating plant in Longview, Texas. The plan allows use of a daily, plantwide weighted average to determine compliance with Texas Regulation V, Section 115.191.

Because EPA considers today's action to be noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on July 9, 1989. However, if notice is received by June 5, 1989, that someone wishes to submit adverse or critical comments, EPA will then publish: (1) A notice that withdraws the action, and (2) A notice that begins a new rulemaking by proposing the action and establishing a comment period.

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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

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

Dated: April 21, 1989.

**William K. Reilly,**

*Administrator.*

### PART 52—[AMENDED]

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

### Subpart SS—Texas

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

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.2270 is amended by adding paragraph (c)(64) to read as follows:

**§ 52.2270 Identification of plan.**

* * * * *

(c) * * *

(64) Board Order No. 85–2, an alternate emission reduction plan for the Continental Can Company, U.S.A. can coating plant in Longview, Texas was submitted by the Governor on July 25, 1985, as amendments to the Texas State Implementation Plan. The source is now subject to the legally enforceable requirements stated in Board Order No. 85–2 and in TACB Permit Number C–16765.

(i) Incorporation by reference.

(A) Texas Air Control Board Order No. 85–2 adopted on May 10, 1985, and TACB Permit Number C–16765 as revised November 21, 1986.

[FR Doc. 89–10401 Filed 5–4–89; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[General Docket No. 89–88; FCC 89–115]**

### Discrimination in Provision of Satellite Delivered Superstation and Network Station Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** This Notice of Inquiry seeks comments on the extent of unlawful discrimination by satellite carriers against distributors in the provision of superstation and network station programming. It is the initial step in preparing a report to be submitted to Congress by January 1990 on this subject. Congress specifically requested such a report when it amended the

Copyright Act by passing the Satellite Home Viewer Copyright Act of 1988.

**DATES:** Comments must be filed on or before June 30, 1989 and reply comments on or before July 31, 1989.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rosalee C. Gorman, Satellite Radio Branch, Common Carrier Bureau, (202) 634–1624.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Inquiry* in General Docket No. 89–88, FCC 89–115, adopted April 12, 1989 and released May 1, 1989.

The full text of this document 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.

**Summary of the Notice of Inquiry**

In 1988, Congress passed legislation amending the Copyright Act to extend a statutory license to retransmission by satellite facilities of television programming of superstations and network stations. Included in these amendments is a prohibition against discrimination by a satellite carrier against a distributor in connection with satellite transmissions of superstation and network station programming. The Commission has been directed by Congress to conduct a study and submit a report by January 1990 on the extent to which such discrimination exists. This Notice of Inquiry is the initial step in the preparation of the report.

The Notice requests comments on the structure of the distribution market for satellite delivered signals of superstations and network stations including identification of participants and of Commission licensed facilities. It also requests comments on the extent and geographic distribution of households not served by network stations which would qualify as subscribers to such service under the Copyright Act. Comments are requested on the extent of discrimination practiced by satellite carriers against distributors as both are defined in the Copyright Act. Evidence of price discrimination as well as of discrimination in access to programming is requested. Comments are requested from all interested parties and, in particular, from the United States Copyright Office.

**List of Subjects in 47 CFR Part 1**

Administrative practice and procedure, Television, Civil rights, Telecommunications.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–10841 Filed 5–4–89; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Parts 1 and 73**

**[MM Docket No. 88–375]**

## FM Broadcast Service; Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and To Increase the Maximum Transmitting Power for Class A FM Stations; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Commission corrects errors in the preamble (effective date) and in the amendments to the CFR that appeared in the **Federal Register** on April 24, 1989 (54 FR 16363). The effective date of the amendments was published as May 24, 1989, but is actually June 1, 1989.

**EFFECTIVE DATE:** The effective date of the CFR amendments published at 54 FR 16363, on April 24, 1989, is corrected to read June 1, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** B.C. "Jay" Jackson, Jr., Mass Media Bureau, (202) 632–9660.

**SUPPLEMENTARY INFORMATION:** On April 24, 1989, a summary of the Commission's *First Report and Order* in MM Docket No. 88–375, (adopted March 30, 1989 and released April 17, 1989) was published in the **Federal Register** (54 FR 16363). The CFR amendments published with that summary contained some errors that are corrected below.

**List of Subjects**

*47 CFR Part 1*

Procedures, Table of FM allotments.

*47 CFR Part 73*

Radio broadcasting, FM broadcast stations, Class C3.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

1. On page 16367, first column, in the headings to Table A, change the word "Regulation" to "Relation".

2. On page 16367, first column, at line 14, instruction 4 states that paragraphs (b) (1) and (2) of 47 CFR 73.210 are revised, however, there are no changes in these paragraphs from the current CFR, and no changes in these paragraphs were intended. To correct the discrepancy, change instruction 4 to state that 47 CFR 73.210 is amended by revising paragraph (a), republishing the introductory text of paragraph (b), paragraphs (b) (1) and (2), and revising paragraph (b)(3).

3. On page 16367, second column, at line 21, instruction 5 states that the introductory text of paragraph (b)(1) is republished, however, there is an intentional change in the wording of this text from the current CFR. To correct the discrepancy, change instruction 5 to state that 47 CFR 73.211 is amended by revising paragraphs (a)(1), (a)(2), (b)(1) and (b)(3).

4. On page 16367, third column, four lines up from the bottom, insert a comma after the second capital B, so that the line reads "classified as Class A, B1, B, C3, C2, C1,".

[FR Doc. 89–10838 Filed 5–4–89; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–329; RM–6355, RM–6528, RM–6527, RM–6529]**

## Radio Broadcasting Services; Boonville, Huntsville, Osceola, and Wheeling, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes FM Channel 257C2 for Channel 257A at Boonville, Missouri, in response to a petition filed by Big County of Missouri, Inc. We shall also modify the license for Station KDBX–FM to specify operation on Channel 257C2 in lieu of Channel 257A. The coordinates for Channel 257C2 at Boonville are 38–46–29 and 92–33–22. In response to a counterproposal filed by Michael S. Rice, we shall allot FM Channel 222A to Osceola, Missouri. There is a site restriction 3.2 kilometers east at coordinates 38–02–02 and 93–38–39. In response to a second counterproposal filed by Kenneth W. Kuenzie, we shall allot FM Channel 223A to Huntsville, Missouri, without a site restriction, at coordinates 39–26–24 and 92–32–42. In response to a third counterproposal filed by John E. Hoehn, we shall allot Channel 289A to Wheeling, Missouri, at coordinates 39–

47–12 and 93–23–07. With this action, this proceeding is terminated.

**DATES:** Effective June 16, 1989; the window period for filing applications for Channel 223A at Huntsville, Channel 222A at Osceola, and Channel 289A at Wheeling will open on June 19, 1989, and close on July 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–329, adopted April 19, 1989, and released May 1, 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 under Missouri is amended by deleting Channel 257A and adding Channel 257C2 at Boonville; and by adding Osceola and Channel 222A; Huntsville and Channel 223A; and Wheeling and Channel 289A.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–10839 Filed 5–4–89; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 97**

**Amateur Operator and Station Licenses**

*CFR Correction*

In Title 47 of the Code of Federal Regulations, Part 80 to End, revised as of October 1, 1987, and October 1, 1988, in § 97.7(a), (b) and (f), the table headings were printed incorrectly. In the October 1, 1988 edition, § 97.7 begins on page 537 and the table headings are corrected to read as follows:

**§ 97.7 [Corrected]**

* * * * *

(a) * * *

| Meter band | Terrestrial location of the amateur radio station | | | Limitations (see para. (g)) |
|---|---|---|---|---|
| | ITU Region 1 | ITU Region 2 | ITU Region 3 | |
| | | | | |

* * * * *

(b) * * *

| Meter band | Terrestrial location of the amateur radio station | | | Limitations (see para. (g)) |
|---|---|---|---|---|
| | ITU Region 1 | ITU Region 2 | ITU Region 3 | |
| | | | | |

* * * * *

(f) * * *

| Meter band | Terrestrial location of the amateur radio station | | | Limitations (see para.(g)) |
|---|---|---|---|---|
| | ITU Region 1 | ITU Region 2 | ITU Region 3 | |
| | | | | |

* * * * *

BILLING CODE 1505–01–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

**[Docket No. 81132–9033]**

**Groundfish of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification of notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the shares of the sablefish total allowable catch (TAC) allocated to hook-and-line gear in the combined Southeast Outside/East Yakutat Districts and the West Yakutat District of the Gulf of Alaska Fishery Management Area have not been fully harvested. The Secretary of Commerce (Secretary), therefore, is modifying the prior closure notice, referenced below, to allow additional fishing for sablefish in the West Yakutat District and to

allow bycatch retention of sablefish in the Southeast Outside/East Yakutat Districts. This action is necessary to fully harvest the shares of sablefish allocated to hook-and-line gear in these three districts. It is intended as a management measure that makes best use of fishery resources in the Gulf of Alaska.

**DATES:** Effective from 12:00 noon on May 3, 1989, Alaska Daylight Time (a.d.t.), until 12:00 noon Alaska Standard Time (a.s.t.), December 31, 1989, for the Southeast Outside/East Yakutat Districts, and until 12:00 noon a.d.t., May 10, 1989, for the West Yakutat District.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Fishery Management Biologist, NMFS, 907–586–7230.

**SUPPLEMENTARY INFORMATION:** The hook-and-line fishing season for sablefish in the combined Southeast Outside/East Yakutat and West Yakutat Districts of the Gulf of Alaska started on April 1, 1989. NOAA Fisheries closed both districts on April 17 (54 FR 16126), April 21, 1989), based on inseason projections that the gear shares allocated to hook-and-line gear had been harvested.

The Alaska Department of Fish and Game (ADF&G) has completed its editing of fish tickets received from participants in the fishery. Upon reviewing the ADF&G results, the Regional Director concluded that at least 300 mt of the 5,680 mt quota remains unharvested in the Southeast Outside/East Yakutat District. Therefore, the Regional Director is allowing further retention of sablefish caught with hook-and-line gear in the Southeast Outside/East Yakutat Districts of sablefish up to 4 percent of the total amount of fish and fish products retained on board a vessel, as calculated from round weight equivalents. Under § 672.24(b)(3) of this part, however, the Secretary is prohibiting directed fishing for sablefish by fishermen using hook-and-line gear in Southeast Outside/East Yakutat District.

The Regional Director has further concluded that 2,023 mt of the 4,320 mt quota assigned to hook-and-line gear in West Yakutat remains unharvested. The Regional Director intends that the directed harvest in the West Yakutat Districts should be 4,120 mt, leaving a balance of 200 mt as bycatch to support other hook-and-line fisheries for the remainder of the fishing year. The amount intended for an additional directed harvest is 2,100 mt. Given the amount of effort expected to participate in a reopening, the Secretary is providing seven more days fishing time in the West Yakutat District to achieve a target directed harvest level of 4,120 mt.

## Classification

This action is taken under § 672.20 and is in compliance with Executive Order 12291.

## List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 1, 1989.

**Richard H. Schaefer,**

*Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 89–10819 Filed 5–2–89; 12:00 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 54, No. 86
Friday May 5, 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 Part 982

[FV-89-039PR]

### Expenses and Assessment Rate for Filberts/Hazelnuts Grown in Oregon and Washington

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 982 for the 1989–90 marketing year established under the filbert/hazelnut marketing order. Funds to administer this program are derived from assessments on handlers.

**DATE:** Comments must be received by May 15, 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, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORAMTION CONTACT:** Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524–S, Washington, DC 20090–6456; telephone: (202) 475–3861.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

The purpoe 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/hazelnut grown in Oregon and Washington subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers of filberts/hazelnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of filbert/hazelnut producers and handlers may be classified as small entities.

The filbert/hazelnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and assessment rate are usually acted upon the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board conducted a telephone vote on April 3, 1989, and unanimously recommended 1989–1990 marketing order expenditures of $426,060 and an assessment rate of $14.00 per ton of filberts/hazelnuts. In comparison, 1988–89 marketing year budgeted expenditures were $424,100 and the assessment rate was $14.00 per ton. Expenditure categories in the 1989–90 budget are $67,560 for administration, $280,000 for promotion, and $100,000 for the emergency reserve fund. Assessment income for 1989–90 is expected to total $280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at $35,000. Reserve funds are adequate to meet the anticipated $111,060 deficit in assessment and other income.

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

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval for the program needs to be expedited. The Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis.

**List of Subjects in 7 CFR Part 982**

Filberts, Hazelnuts, Marketing agreements and orders, Oregon, Washington.

For the reasons set forth in the preamble, it is proposed that a new § 982.334 be added as follows:

## PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

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.

2. New § 982.334 is added to read as follows:

**§ 982.334 Expenses and assessment rate.**

Expenses of $426,060 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $14.00 per ton of assessable filberts/hazelnuts for the 1989–90 marketing year ending June 30, 1990. Unexpected funds may be carried over as a reserve.

Dated: May 2, 1989.

**Charles R. Brader,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 89–10851 Filed 5–4–88; 8:45 am]

BILLING CODE 3410–02–M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 35

**[Docket No. PRM–35–8]**

### Amersham Corp.; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Commission is publishing for public comment a notice of receipt of a petition for rulemaking dated November 14, 1988, which was filed with the Commission by Amersham Corporation. The petition was docketed by the Commission on February 15, 1989, and has been assigned Docket No. PRM–35–8. The petitioner requests that the Commission amend its regulations concerning the medical use of byproduct material to include Iridium-192 wire for interstitial treatment of cancer in the provisions of 10 CFR 35.400 that govern the use of sources for brachytherapy.

**DATE:** Submit comments by June 5, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m., Federal workdays.

For a copy of the petition, write the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Acting Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

**SUPPLEMENTARY INFORMATION:** The Nuclear Regulatory Commission (NRC) has established provisions that regulate the medical use of byproduct material in 10 CFR Part 35. Under these provisions, medical licensees are permitted to use small, radioactive sources to treat cancer. These sources are designed to be implanted directly into a tumor area or applied on the surface of an area to be treated. This procedure is known as brachytherapy. The list of sources approved for use in brachytherapy is set out in 10 CFR 35.400.

The petitioner requests that the NRC amend 10 CFR 35.400 to add Iridium-192 wire for the interstitial treatment of cancer to the list of sources approved for use in brachytherapy. The petitioner manufactures and markets a range of Iridium-192 wire products and accessories designed to facilitate product use.

The source wire consists of an alloy of iridium and platinum which is encased in a pure platinum sheath. The composite is drawn into a wire of various diameters ranging from 0.3 to 0.6 mm. The inactive platinum sheath is 0.1 mm. The wire is irradiated to activate the Iridium-192 nuclide. The wire may then be cut and mounted in holders to specified lengths by the user. In some cases, the petitioner may arrange to supply the wire ready mounted in narrow bore plastic tubing.

The petitioner does not regard these products as sealed sources because of the unavoidable contamination generated in the source casing during neutron irradiation. However, the petitioner states that the contamination does not represent a serious problem because of the short half life and low energy of the contaminants. According to the petitioner, about half of the removable contamination showed a half life of 2.5 days and the remaining portion showed a half life of 15 days. No gamma radiation was emitted by the contaminants.

The petitioner has submitted a proposed amendment to the Illinois Department of Nuclear Safety (IDNS) requesting the addition of Iridium-192 wire products, Model Number ICW.100, to Amersham's Medical Source Distribution License. The products covered by Model Number ICW.100 were marketed by Amersham in the United States prior to May 28, 1976, and were included in the Amersham/Searle Clinical Radiation Sources and Accessories Catalog of April 1973. The products covered by this model number were listed with the FDA as medical devices in August 1979.

As noted, the Amersham product consists of a platinum covered platinum-iridium alloy. The difference in hardness between the comparatively soft platinum outer sheath and the harder alloy core causes the platinum to smear over the end of the wire as it is cut.

This minimizes contamination and improves the integrity of cut wire. As a result, Amersham states that it has not encountered any problem of "flaking" or delamination of the Iridium-192 wire. Amersham also supplies two accessories that aid in the safe handling, cutting, and loading of the Iridium-192 wire. The first accessory, wire loader, code N.4100, is used to cut the 0.3 mm diameter wire by way of a special guillotine and to enclose and fix it in a small diameter nylon tube. The wire is, almost without exception, implanted in patients after enclosure in nylon tubing. The second accessory is pin cutter, code ASN.200. The pin cutter and its associated handling device are used on the 0.6 mm diameter wire fabricated into the shape of single-pins or "hair pins". These are, almost without exception, directly implanted in patients without the use of a nylon tubing.

The petitioner requests this amendment so that each medical licensee that intends to use Iridium-192 wire source for the interstitial treatment of cancer may do so without having to request and obtain a specific amendment to the license authorizing the medical use of byproduct material. As a result, the products manufactured and marketed by the petitioner would be more easily available to a greater number of potential users.

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

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**10 CFR Parts 50, 72, and 170**

**RIN: 3150-AC76**

## Storage of Spent Nuclear Fuel in NRC-Approved Storage; Casks at Nuclear Power Reactor Sites

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide, as directed by the Nuclear Waste Policy Act of 1982, for the storage of spent fuel at the sites of power reactors without, to the maximum extent practicable, the need for additional site-specific approvals. Holders of power reactor operating licenses would be permitted to store spent fuel, in casks approved by NRC, under a general license. The proposed rule contains criteria for obtaining an NRC Certificate of Compliance for spent fuel storage casks.

**DATE:** Submit comments by June 19, 1989. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESS:** Mail written comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555 ATTN: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:30 a.m. and 4:15 p.m. weekdays.

Copies of NUREG-0459, 0575, 0709, 1092, 1140, and NUREG/CR-1223, reports which are referenced in this notice and the environmental assessment, may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. DOE/RW-0196, referenced in the regulatory analysis, is available from the U.S. Department of Energy, Office of Scientific and Technical Information, Post Office Box 62, Oak Ridge, TN 37831. Copies of DOE/RL-87-11, referenced in the environmental assessment, and the NUREG reports listed above may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. Copies of the NUREG reports listed above, the environmental assessment and finding of no significant environmental impact, and comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC, Lower Level.

**FOR FURTHER INFORMATION CONTACT:** William R. Pearson, Office of Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301)492-3764.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982 (NWPA) includes the following directive, "The Secretary [of DOE] shall establish a demonstration program in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "the Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor."

### Discussion

This proposed rule would allow power reactor licensees to store spent fuel at the reactor site without additional site-specific reviews. A general license would be issued to holders of power reactor licenses for the storage of spent fuel in dry casks approved by the NRC. The reactor licensee would have to show that there are no changes required in the facility technical specifications or unreviewed safety questions related to activities involving storage of spent fuel under the general license. The licensee would also have to show conformance with conditions of the NRC Certificate of Compliance issued for the cask. The licensee would have to establish and maintain records showing compliance, which would have to be made available for inspection by the Commission.

This proposed rule would not limit storage of spent fuel to that which is generated at the reactor site. Transfers of spent fuel from one reactor site to another are authorized under the receiving site's facility operating license pursuant to 10 CFR Part 50. The holder of a reactor operating license would apply for a license amendment, under § 50.90 unless already authorized in the operating license, for the receipt and handling of the spent fuel from another reactor. If transfer of spent fuel is authorized, the reactor licensee would also have to make a request for amendment of the Price-Anderson indemnification agreement to provide for coverage of the transferred spent fuel. 10 CFR Part 72 is not germane to such transfers of spent fuel. If the spent fuel has been previously transferred and is currently stored in the reactor spent fuel pool, the only consideration under the general license would be whether or not the spent fuel meets conditions of the cask's Certificate of Compliance.

Although experience with storage of spent fuel under water is greater than with dry storage in casks, experience with storage of spent fuel in dry casks is extensive and widespread. The Canadians have been storing dry CANDU-type spent fuel at Whiteshell in vertical concrete casks called silos since 1975. Although the storage of spent fuel at Whiteshell does not involve light-water-reactor (LWR) fuel, it has contributed to the knowledge and experience of dry spent fuel storage in concrete casks. Dry cask storage has been demonstrated in West Germany. There has also been experience with dry spent fuel storage in the United States. The Department of Energy (DOE) and its predecessors have kept non-LWR spent fuel in dry storage in vaults and dry wells since the 1960s. An NRC survey of the dry storage of spent fuel, in the United States and elsewhere, was presented in NUREG/CR-1223, "Dry Storage of Spent Fuel A Preliminary Survey of Existing Technology and Experience" (April 1980). NUREG/CR-1223, at Section IV.C, contains a description of DOE demonstration of dry LWR spent fuel storage in sealed storage casks (SSC) and dry wells. The storage of LWR spent fuel in SSC, which is an above ground, steel-lined, reinforced concrete cylinder or cask, started in 1979. The DOE demonstration program has continued and has been expanded to include dry storage in metal casks and storage of consolidated fuel rods; and storage of spent fuel assemblies. Programs have been conducted by DOE in cooperation with Virginia Power at its Surry plant, with Carolina Power and Light at its H.B. Robinson 2 plant, and with General Electric at its Morris plant for dry storage of LWR spent fuel. Also dry storage of LWR spent fuel assemblies continues at the Idaho National Engineering Laboratory, along with

demonstration of their disassembly and storage of the consolidated fuel rods.

The NRC staff has obtained a substantive amount of information from the DOE development programs. It has also gained experience from the issuance of licenses for the onsite storage of spent fuel in nodular cast iron casks at the Surry site of Virginia Power and in stainless steel canisters stored inside concrete modules at the H.B. Robinson 2 site of Carolina Power and Light. The safety of dry storage of spent fuel was considered during development of the Commission's original regulations in 10 CFR Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI)," which was promulgated on November 12, 1980 (45 FR 74693). A final rule entitled, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste," which replaced the regulations issued on November 12, 1980, was published in the **Federal Register** on August 19, 1988 (53 FR 31651) and became effective September 19, 1988. This final rule was issued mainly to provide for licensing the storage of spent fuel and high-level waste at a monitored retrievable storage (MRS) facility, and does not cover the mandates of sections 133 and 218(a) of the NWPA. However, it did specifically address the safety of dry storage of spent fuel.

Activities related to loading and unloading spent fuel casks are routine procedures at power reactors. The procedures for dry storage of spent fuel in casks would be an extension of these procedures. Over the last several years the staff has reviewed and approved four spent fuel storage cask designs. Requests for approval of cask designs are currently submitted in the form of topical safety analysis reports (TSARs). Four dry storage cask TSARs have been approved for referencing, which means that an ISFSI license applicant may reference appropriate parts of these reports in licensing proceedings for the storage of spent fuel. This greatly reduces an ISFSI license applicant's time, effort, and cost. The same reliance on an approved safety analysis is being made for on-site dry cask storage.

Separate topical safety analysis reports have been received for design of casks fabricated using nodular cast iron, thick-walled ferritic steel, concrete, and stainless steel and lead. Four spent fuel storage cask topical safety analysis reports have been approved for referencing in specific license applications, as previously mentioned, and four are still under review at the present time. In particular, the topical safety analysis report (TSAR) for the Castor-V/21, entitled "Topical Safety Analysis Report for the Castor Cask, Independent Spent Fuel Storage Installation (Dry Storage)," was submitted by General Nuclear Systems, Inc. on December 16, 1983. The NRC staff approved the Castor-V/21 TSAR for reference in licensing proceedings on September 30, 1985. In a specific licensing proceeding under Part 72 by Virginia Electric Power Company (VEPCo) in January of 1985, the use of the Castor-V/21 was approved on July 7, 1986 for storage of spent fuel at their Surry Power Station. Currently, there are seven of these casks filled and stored on the ISFSI pad at the Surry site and an eighth cask is filled and ready to be moved to the storage pad.

Although the Castor-V/21, is the only spent fuel storage cask currently being used, the SARs for the Westinghouse MC–10, and the Nuclear Assurance Corporation's NAC/ST and NAC–C28 S/T casks have been approved for reference. These casks are being proposed for approval under § 72.214, "List of approved spent fuel storage casks." While the Certificate of Compliance for each cask may differ in some specifics, e.g., certificate number; operating procedures; training exercises; spent fuel specifications, many of the safety conditions are very similar. Copies of the Certificates of Compliance are being issued for comment, and are available for inspection and copying for a fee at the Commission's Public Document Room at 2120 L Street NW., Washington, DC, Lower Level. Single copies of the proposed certificates may be obtained from J.P. Roberts, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards; (Telephone: (301)492–0608).

Storage casks certified in the future will be routinely added to the listing in § 72.214 through rulemaking procedures. Since this type of rulemaking would neither constitute a significant question of policy nor amend 10 CFR Parts 0, 2, 7, 8, 9 Subpart C, or 110, the Commission concludes that such additions to § 72.214 may be made under the rulemaking authority delegated to the Executive Director for Operations. Certificates of Compliance will be exhibited in a NUREG report issued by the NMSS staff, which will be updated as appropriate.

During review for the cask designs that are being proposed for certification in this rulemaking, the NMSS staff considered compatibility with transportation to and disposal at DOE facilities and will continue to do so for future cask approvals. The vendors of these casks have indicated that they will apply for approval of their casks for spent fuel transportation. Currently there is limited knowledge concerning specific design criteria by which to design storage casks for minimizing the handling of spent fuel between the time it is put into casks for storage at a reactor site and the time it will be handled for storage at a monitored retrievable storage facility (MRS) or disposal at a geologic repository. However, the staff will remain in contact with DOE and will assure, to the extent practicable, that cask designs incorporate the latest design criteria available at the time that the cask design is approved or certified.

The NRC experience in the review of cask design and fabrication, and licensing of spent fuel storage installations on the site of operating reactors, has been documented in part by publication of two draft regulatory guides. In April of 1986, two draft regulatory guides entitled "Standard Format and Content for the Safety Analysis Report for Onsite Storage of Spent Fuel Storage Casks" (Task number CE–301) and "Standard Format and Content for a Topical Safety Analysis Report for a Dry Spent Fuel Storage Cask" (Task number CE–306) were issued for public comment. These draft guides are being processed and the guide under task number CE–301 will become Regulatory Guide 3.62 and the one under task number CE–302 will become Regulatory Guide 3.61. Single copies of these draft guides may be obtained from W.R. Pearson Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555 (Telephone: (301) 492–3764).

The passive nature of dry storage of spent fuel in casks provides operational benefits attractive to potential users. One benefit is that there is no need to provide operating systems to purify and circulate cooling water or other fluid. Another benefit is that the potential for corrosion of the fuel cladding and reaction with the fuel is reduced, because an inert atmosphere is expected to be maintained inside dry spent fuel storage casks. Because cooling of the spent fuel is a passive activity, active mechanisms, such as pumps and fans, are not required. Although Part 72 allows storage of any spent fuel over one year old, (i.e., one year since the fuel was involved in a sustained nuclear chain reaction), it is anticipated that most spent fuel stored in casks will be five years old or more. Because of the passive nature of cask cooling, the

storage capacity of a cask is significantly increased as the spent fuel is aged, especially for fuel that is five years old or more. It is probable that reactor licensees will remove the older fuel from their storage pools to take advantage of this additional cask storage capacity.

As a result of the above discussion, the Commission believes that dry storage of spent fuel in casks approved by the Commission will provide adequate protection to public health and safety and the environment.

**Proposed Rule**

*The General License*

Under this proposed rule, a general license would be issued to holders of nuclear power reactor licenses to store spent fuel at reactor sites in casks approved by the NRC. The Commission will rely on dry storage of spent fuel in casks for confinement of radioactive material to provide adequate protection of public health and safety and the environment. A power reactor license holder would have to notify the Commission before storing spent fuel under the general license for the first time and register use of each cask as the spent fuel is stored. A separate record would also be established for each cask by the cask vendor, which would be transferred to and be maintained by cask users.

The reactor license holder would have to ensure that the storage of spent fuel will be in compliance with the conditions of the cask Certificate of Compliance, including assurance that site parameters and other design bases are within the envelope of the values analyzed in the cask safety analysis report. Evaluations would also have to be made to ensure that there will be no changes necessary to the facility technical specifications and that there are no unresolved safety questions in activities involving the storage casks. Procedures and criteria in 10 CFR 50.59 would be used for these evaluations. These types of evaluation are currently done for specific licenses issued under Part 72. Issues related to systems and components used both for reactor operations and spent fuel storage activities would be included. Most concerns to date have been related to control of heavy loads and have been accommodated. If there is a safety problem or a change in technical specifications required, and the reactor license holder wishes to store spent fuel under the general license, the problem would have to be resolved before storing spent fuel under the general license and could include submittal of an application for license amendment under Part 50 if necessary.

Reactor licensees would have to review their quality assurance program, emergency plan, training program, and radiation control program using procedures in § 50.59 and modify them as may be necessary to cover the activities related to spent fuel storage under the general license. These plans and programs are in effect for reactor operations and the appropriate existing plan or program could be modified or amended to cover activities related to the spent fuel storage.

The reactor licensee would have to conform to conditions in the cask's Certificate of Compliance, which includes conducting activities according to written operating procedures. These operating procedures could be developed using the same or a similar system by which the operating procedures for the reactor were developed.

Instances in which significant reductions in the safety effectiveness of or defects in casks are discovered must be reported to the NRC. Initial reports would be submitted under 10 CFR 50.72 "Immediate notification requirements for operating nuclear power reactors." A new paragraph would be added to § 50.72(b)(2) for this purpose. A complete written report would be submitted within 30 days.

When the power reactor operating license expiration date approaches, the holder of the license must take some actions. Under 10 CFR 50.54(bb) the reactor license holder must submit a program in writing to the Commission, no later than five years prior to the license expiration date, showing how the reactor licensee intends to manage and provide funding for the management of all irradiated fuel on the reactor site. This program would have to include the spent fuel stored under the general license proposed in this rulemaking. The reactor licensee will also have to decide whether to request termination of the reactor operating license under 10 CFR 50.82. If the reactor license holder decides to apply for termination of the license, the plan submitted with the application must show how the spent fuel stored under this general license will be removed from the site. The plan would have to include an explanation of when and how the spent fuel will be moved, unloaded, and shipped prior to starting decommissioning of the equipment needed for these activities.

In part, the environmental assessment for this rulemaking relies on findings from the Waste Confidence Decision (49 FR 34658, 8/31/84), in which the Commission concluded they had confidence that there would be no significant environmental impacts from the storage of spent fuel for a period of 30 years beyond the expiration date of reactor licenses. Thus, an application for reactor license termination that proposes a decommissioning period beyond this 30-year period would have to contain a discussion of the environmental impacts from storage of the spent fuel beyond the period analyzed by the Commission. The general license would terminate automatically when the spent fuel is removed from storage.

*Cask Certification*

A spent fuel storage cask will be relied on to provide safe confinement of radioactive material independent of a nuclear power reactor's site, so long as conditions of the Certificate of Compliance are met. The storage cask approval program, in many respects, will be analogous to that now conducted for spent fuel casks approved for transportation under 10 CFR Part 71. A cask vendor will submit a safety analysis report showing how the cask design, fabrication, and testing will ensure adequate protection of public health and safety. Certificates of Compliance will be exhibited in a NUREG report, which will be made available to the public.

Spent fuel is now temporarily stored at reactor sites, ISFSI, and elsewhere until a Department of Energy monitored retrievable storage facility or high-level radioactive waste repository is ready. The spent fuel will then be shipped to one of these facilities. Changes in the law could shift the Commission's policies or cause a change in its regulations. It appears to be prudent that cask design approvals, i.e., approval of spent fuel cask topical safety analysis reports under current regulations; or issuance of Certificates of Compliance under the proposed regulation, should be for a limited time period. Current regulations limit the storage of spent fuel in an ISFSI to 20 years, after which the license may be renewed. The Commission believes that 20-year increments are appropriate for such cask design approvals, after which designs may be renewed.

The holder of the cask Certificate of Compliance (cask vendor) should apply for re-approval of a storage cask. Submittal of an application would be made 17 years after the initial cask approval date, which is three years prior to the expiration date of the cask certificate, to allow time for the NRC staff to reevaluate the cask safety and

reissue the Cask certificate. If the holder of a cask certificate goes out of business or will not submit an application for reapproval in a timely manner for any reason, the Commission should be notified and it in turn would notify cask users. In any case, cask users would have to ensure that spent fuel is stored in casks approved by the NRC. Several options would be available to licensees. If a cask design is reapproved under submittals by the vendor, the Commission would notify all users and the only action necessary for the users would be to update the cask's records. If the cask vendor does not apply for reapproval, for whatever reason, the licensee would be notified by the Commission. The licensee would then have to arrange for reapproval or remove casks from service as their 20-year approved storage life expired. This could mean removal of the spent fuel and storing it elsewhere.

The Commission believes that a prudent concern for overall activities related to the back-end of the LWR fuel cycle dictates that consideration should be given to the compatibility of spent fuel storage cask designs with the transportation of the spent fuel to its ultimate disposition at a DOE facility. Cask designers should be aware of DOE developments and plans for transportation of spent fuel offsite and should design spent fuel storage casks, to the extent that is practicable given the information that is available at the time that the cask is designed, for compatibility with future disposition of the spent fuel. The cask designs that are included in this rulemaking comply to the extent practicable at this time. The Commission notes that the vendors of these casks have indicated their intent to pursue certification for their cask as a shipping container for offsite transportation under 10 CFR Part 71. However, spent fuel can be safely off-loaded from storage casks at reactor sites, if necessary, at the end of the storage period. In the interest of minimizing overall fuel cycle impacts the Commission encourages storage cask design developments that would reduce the handling of spent fuel.

The scope of this rule is to allow holders of nuclear power reactor licenses to store spent nuclear fuel at reactor sites under a general license using certified dry storage casks, because use of these casks is essentially independent of site characteristics. The Commission has evaluated and approved, in specific licenses issued under 10 CFR Part 72, other types of dry storage modules. These methods may be approved in the future for use under a general license.

NRC costs related to spent fuel storage cask Certificates of Compliance, cask fabrication inspections, and onsite inspections would be fully recovered. The schedule of fees in 10 CFR 170.31 would be revised to recover these costs.

*Safeguards*

Spent fuel removed from light water reactors contains low enriched uranium, fission products, plutonium, and other transuranium elements (transuranics). Owing to the special nuclear material in spent fuel, safeguards for an independent spent fuel storage installation must protect against theft and radiological sabotage and must provide for material accountability. The requirements for physical protection are set forth in proposed § 72.212. No specific requirements for material control and accounting are being added because existing requirements in Parts 72 and 50 are adequate.

The theft issue arises mainly from the plutonium component of the spent fuel. Plutonium, when separated from other substances, can be used in the construction of nuclear explosive devices and therefore must be provided with a high level of physical protection. However, the plutonium contained in spent fuel is not readily separable from the highly radioactive fission products and other transuranics and for that reason is not considered a highly attractive material for theft. Moreover, the massive construction of casks significantly complicates theft scenarios. For these reasons no specific safeguards measures to protect against theft are proposed other than maintaining accounting records and conducting periodic inventories of the special nuclear material contained in the spent fuel.

Safeguards measures should be consistent with existing site provisions against potential radiological sabotage. The term "radiological sabotage" is defined in 10 CFR Part 73 and means any deliberate act directed against a plant or transport vehicle and cask in which an activity licensed under NRC regulations is conducted, or against a component of a plant or transport vehicle and cask which could directly or indirectly endanger the public health and safety by exposure to radiation.

In assessing the probability and consequences of radiological sabotage, the NRC considers: (1) The threat to storage facilities; (2) the response of typical storage casks or vaults and their contained spent fuel to postulated acts of radiological sabotage; and (3) the public health consequences of acts of radiological sabotage.

The NRC has carried out studies to develop information about possible adversary groups which might pose a threat to licensed nuclear facilities. The results of these studies are published in NUREG–0459, "Generic Adversary Characteristics—Summary Report" (March 1979) and NUREG–0703, "Potential Threat to Licensed Nuclear Activities from Insiders" (July 1980). Actions against facilities were found to be limited to a number of low consequence activities and harassments, such as hoax bomb threats, vandalism, radiopharmaceutical thefts, and firearms discharges. The list of actions is updated annually in a NUREG–0525, "Safeguards Summary Event List" (July 1987). None of the actions have affected spent fuel containment and, thus, have not caused any radiological health hazards.

In addition, the NRC staff regularly consults with law enforcement agencies and intelligence-gathering agencies to obtain their views concerning the possible existence of adversary groups interested in radiological sabotage of commercial nuclear facilities. None of the information the staff has collected confirms the presence of an identifiable domestic threat to dry storage facilities or to other components of nuclear facilities.

Despite the absence of an identified domestic threat, the NRC has considered it prudent to study the response of loaded casks to a range of sabotage scenarios. The study is classified. However, an overview of the study is provided in the following paragraphs.

Being highly radioactive, spent fuel requires heavy shielding for safe storage. Typical movable storage casks are of metal or concrete, weigh 100 tons, and have wall thickness from 10 to 16 inches of metal or 30 inches of concrete. The structural materials and dimensions enable the casks and vaults to withstand attack by small arms fire, pyrotechnics, mechanical aids, high velocity objects, and most forms of explosives without release of spent fuel. After considering various technical approaches to radiological sabotage, the NRC concluded that radiological sabotage, to be successful, would have to be carried out with the aid of a large quantity of explosives.

The consequences to the public health and safety would stem almost exclusively from the fraction of the release that is composed of respirable particles. In an NRC study, an experiment was carried out to evaluate the effects of a very severe, perfectly executed explosive sabotage scenario

against a simulated storage cask containing spent fuel assemblies. The amount of fuel disrupted was measured. The fraction of disrupted material of respirable dimensions (0.005%) had been determined in a previous experiment. From this information, an estimate of the airborne, respirable release was made, and the dose as a function of range and other variables was calculated. In a typical situation, for an individual at the boundary of the reactor site (taken as 100 meters from the location of the release) and in the center of the airborne plume, the whole-body dose was calculated to be 1 rem and the 50-year dose commitment (to the lung, which is the most sensitive organ) was calculated to be 2 rem. Doses higher or lower can be obtained depending on the variables used in the calculation. Variables include the meteorological conditions, the age and burn-up of the fuel, the heat-induced buoyancy of the airborne release, the range to the affected individual, and the explosive scenario assumed.

Although the experiment and calculations carried out lead to a conclusion of low public health consequences, there are limitations that must be taken into account. In particular, consequence modeling assumptions more severe than those in the foregoing calculation are possible if unconstrained sabotage resources or protracted loss of control of the storage site are allowed. For that reason, protection requirements are proposed to provide for (1) early detection of malevolent moves against the storage site, and (2) a means to quickly summon response resources to assure against protracted loss of control of the site.

The proposed requirements comprise a subset of the overall protection requirements currently in force at every operating nuclear power reactor. Inasmuch as the security force at each reactor is thoroughly familiar with requirements similar to those proposed and has years of experience in carrying them out, the NRC concludes that the requirements can be successfully imposed through a general license for storage of spent fuel in NRC-approved casks without the need for advanced NRC review and approval of a physical security plan or other site-specific documents before the reactor licensee implements the requirements.

Material control and accounting (MC&A) requirements are designed to protect against the undetected loss of the special nuclear material in spent fuel by maintaining vigilance over the material, tracking its movement and location, monitoring its inventory status, maintaining records of transactions and movements, and issuing reports of its status at the time of physical inventory. Similar requirements for MC&A have been applied to power reactors, to spent fuel storage at independent spent fuel storage installations, and to operations at certain other classes of fuel cycle facilities without requiring the licensee to submit a plan to document how compliance will be achieved. In these situations the requirements have been found to be sufficient. For these reasons, it is concluded that the MC&A requirements for the dry storage of spent fuel at power reactors can be handled under a general license.

A minor editorial change to § 72.30(b) is also proposed to make clear that a decommissioning funding plan is an integral part of an applicant's proposed decommissioning plan.

### Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The rule is mainly administrative in nature and would not change safety requirements, which could have significant environmental impacts. The proposed rule would provide for power reactor licensees to store spent fuel in casks approved by NRC at reactor sites without additional site-specific approvals by the Commission. It would set forth conditions of a general license for the spent fuel storage and procedures and criteria for obtaining storage cask approval. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW., Washington, DC, Lower Level. Single copies of the environmental assessment and the finding of no significant impact are available from W.R. Pearson, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 492–3764.

### Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rulemaking has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The reporting burden for this collection of information is estimated to average 2,336 hours, which will be primarily for development and submittal of a safety analysis report (SAR) by spent fuel storage cask vendors. Review and approval of an SAR is necessary in order to obtain a Certificate of Compliance for a cask design from NRC. A Certificate of Compliance is required for each cask design before these casks can be used for spent fuel storage under the general license in this rule. Responses required from power reactor licensees under this rule would be initial notification for use of the general license and submittal of a notice when each cask is stored. Thus, no significant reporting burden is anticipated for these licensees. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch, Mail Stop P–530, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0132), Office of Management and Budget, Washington, DC 20503.

### Regulatory Analysis

The Commission has prepared a preliminary regulatory analysis on this proposed rule. The analysis examines the benefits and impacts considered by the Commission. The Preliminary Regulatory Analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW., Washington, DC, Lower Level. Single copies may be obtained from W.R. Pearson, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301)492–3764.

The Commission requests public comments on the preliminary regulatory analysis, which may be submitted to the NRC as indicated under the **ADDRESSES** heading.

### Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only licensees owning and operating nuclear power reactors. The owners of nuclear power plants do not fall within the scope of the definition of "small entities" set forth in section 601(3) of the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued

by the Small Business Administration at 13 CFR Part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and thus, a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in § 50.109(a)(1).

**List of Subjects**

*10 CFR Part 50*

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

*10 CFR Part 72*

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

*10 CFR Part 170*

Byproduct material, Nuclear materials, Nuclear power plants and reactors; Penalty, Source material, Special nuclear material.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following revisions to 10 CFR Part 72 and conforming amendments to 10 CFR Parts 50 and 170.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 is revised to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c)(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 96 Stat. 2230 (42 U.S.C. 10153) and 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a),(b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201 (o)).

2. In §72.30, paragraph (b) is revised to read as follows:

**§ 72.30 Decommissioning planning, including financing and recordkeeping.**

* * * *

(b) The proposed decommissioning plan must also include a decommissioning funding plan containing information on how reasonable assurance will be provided that funds will be available to decommission the ISFSI or MRS. This information must include a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (c) of this section, including means of adjusting cost estimates and associated funding levels periodically over the life of the ISFSI or MRS.

* * * * *

3. New Subpart K and Subpart L are added to read as follows:

**Subpart K—General License for Storage of Spent Fuel at Power Reactor Sites**

Sec.

72.210 General license issued.
72.212 Conditions of general license issued under §72.210.
72.214 List of approved spent fuel storage casks.
72.216 Reports.
72.218 Termination of licenses.
72.220 Violations.

**Subpart L—Approval of Spent Fuel Storage Casks**

72.230 Procedures for spent fuel storage cask submittals.
72.232 Inspection and tests.
72.234 Conditions of approval.
72.236 Specific criteria for spent fuel storage cask approval.
72.238 Issuance of an NRC Certificate of Compliance.
72.240 Conditions for spent fuel storage cask reapproval.

## Subpart K—General License for Storage of Spent Fuel at Power Reactor Sites

**§ 72.210 General license issued.**

A general license is hereby issued for the storage of spent fuel in an independent spent fuel storage installation at power reactor sites to persons authorized to operate nuclear power reactors under Part 50 of this chapter.

**§ 72.212 Conditions of general license issued under § 72.210.**

(a)(1) The general license is limited to storage of spent fuel in casks approved under the provisions of this part.

(2) The general license for the storage of spent fuel in each cask fabricated under a Certificate of Compliance shall terminate 20 years after the date that the cask is first used by the licensee to store spent fuel, unless the cask model is reapproved in which case the general license shall terminate on the revised certification date. In the event that a cask vendor does not apply for a cask model reapproval under § 72.240, any user or user representative may apply for cask reapproval.

(b) The general licensee shall:

(1)(i) Notify the Nuclear Regulatory Commission under § 72.4 at least 90 days prior to first storage of spent fuel under the general license. The notice may be in the form of a letter, but must contain the licensees name, address, reactor license number (s), and the name and means of contacting a person for additional information. A copy of the submittal must be sent to the Administrator of the appropriate Nuclear Regulatory Commission

regional office listed in Appendix D to Part 20.

(ii) Register use of each cask with the Nuclear Regulatory Commission no later than 30 days after using the cask to store spent fuel. This registration may be accomplished by submitting a letter containing the following information: the licensee's name and address, the licensee's reactor license number(s), the name and title of a person who can be contacted for additional information, the cask certificate or model number, and the cask identification number. Submittals must be in accordance with the instructions contained in § 72.4 of this part. A copy of each submittal must be sent to the Administrator of the appropriate Nuclear Regulatory Commission regional office listed in Appendix D to Part 20.

(2) Perform written evaluations showing that conditions set forth in the Certificate of Compliance are met for the anticipated total number of casks to be used for storage. The licensee shall also show that cask storage pads and areas are designed to adequately support the static load of the stored casks. Evaluations must show that the requirements of § 72.104 of this part are met. A copy of this record must be retained until spent fuel is no longer stored under the general license issued under § 72.210.

(3) Review the approved Safety Analysis Report (SAR) referenced in the Certificate of Compliance and the related NRC Safety Evaluation Report to determine that the licensee's applicable site parameters are enveloped by the cask design capabilities considered in these reports. The results of this review should be documented in the evaluation made in paragraph (b)(2) of this section.

(4) Pursuant to § 50.59 of this chapter, determine whether activities under this general license involve any unreviewed safety question or change in the facility technical specifications.

(5) Protect the spent fuel against the design basis threat of radiological sabotage in accordance with the licensee's physical security plan approved in accordance with § 73.55 of this chapter, with the following additional conditions and exceptions:

(i) The physical security organization and program must be modified as necessary to assure that activities conducted under this general license do not decrease the effectiveness of the protection of vital equipment in accordance with § 73.55 of this chapter.

(ii) Storage of spent fuel must be within a protected area, in accordance with § 73.55(c) of this chapter, but need not be within a separate vital area. Existing protected areas may be expanded or new protected areas added for the purpose of storage of spent fuel in accordance with this general license.

(iii) Notwithstanding any requirements of the licensee's approved security plan, the observational capability required by § 73.55(h)(6) of this chapter may be provided by a guard or watchman in lieu of closed circuit television for protection of spent fuel under the provisions of this general license.

(iv) For the purposes of this general license, the licensee is exempt from § 73.55(h) (4)(iii)(A) and (5) of this chapter.

(6) Pursuant to the procedures in § 50.59 of this chapter, review the reactor emergency plan, quality assurance program, training program, and radiation protection program and modify them as necessary for activities related to storage of spent fuel under the general license.

(7) Maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each model of cask used for storage of spent fuel, until use of the cask model is discontinued. The licensee shall comply with the terms and conditions of the certificate.

(8)(i) Maintain the record provided by the cask supplier for each cask that shows:

(A) The NRC Certificate of Compliance number;

(B) The name and address of the cask vendor/lessor;

(C) The listing of spent fuel stored in the cask; and

(D) Any maintenance performed on the cask.

(ii) This record must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask has been conducted under an approved quality assurance program.

(iii) In the event that a cask is sold, leased, loaned, or otherwise transferred, this record must also be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is complete.

(9) Conduct activities related to storage of spent fuel under this general license in accordance with written procedures.

(10) On reasonable notice, make records available to the Commission for inspection.

**§ 72.214 List of approved spent fuel storage casks.**

The following casks have been reviewed and evaluated by the Commission and are approved for storage of spent fuel under the conditions specified in their Certificates of Compliance. Certificates of Compliance are available for inspection and copying for a fee at the Commission's Public Document Room at 2120 L Street NW., Washington, DC, Lower Level.

*Certificate Number:* 1000.
*SAR Submitted by:* General Nuclear Systems, Inc.
*SAR Title:* "Topical Safety Analysis Report for the Castor V/21 Cask Independent Spent Fuel Storage Installation (Dry Storage) (TSAR)".
*Docket Number:* 72–1000.
*Certification Expiration Date:* — —, 2009
*Model Number:* CASTOR V/21.
*Certificate Number:* 1001.
*SAR Submitted by:* Westinghouse Electric Corporation.
*SAR Title:* Topical Safety Analysis Report For The MC–10 Cask Independent Spent Fuel Storage Installation (Dry Storage).
*Docket Number:* 72–1001.
*Certification Expiration Date:* — —, 2009
*Model Number:* MC–10.
*Certificate Number:* 1002.
*SAR Submitted by:* Nuclear Assurance Corporation.
*SAR Title:* Topical Safety Analysis Report For The NAC Storage/ Transportation Cask Independent Spent Fuel Storage Installation (Dry Storage).
*Docket Number:* 72–1002.
*Certificate Expiration Date:* — —, 2009 .
*Model Number:* NAC S/T.
*Certificate Number:* 1003.
*SAR Submitted by:* Nuclear Assurance Corporation.
*SAR Title:* Topical Safety Analysis Report For The NAC Storage/ Transportation Cask Containing Consolidated Fuel For Use at an Independent Spent Fuel Storage Installation (Dry Storage).
*Docket Number:* 72–1003.
*Certificate Expiration Date:* — —, 2009.
*Model Number:* NAC–C28 S/T.

**§ 72.216 Reports.**

(a) The licensee shall make an initial report under § 50.72(b)(2)(vii) of this chapter of any:

(1) Defect with safety significance discovered in any spent fuel storage cask system or component important to safety; and

(2) Instance in which there is a significant reduction in the effectiveness of any spent fuel storage cask confinement system during use.

(b) A written report, including a description of the means employed to repair any defects or damage and prevent recurrence, must be submitted in accordance with § 72.4 within 30

days. A copy of the written report must be sent to the Administrator of the appropriate Nuclear Regulatory Commission regional office shown in Appendix D to Part 20 of this chapter.

**§ 72.218 Termination of licenses.**

(a) The notification regarding planning for the management of all spent fuel at the reactor required by § 50.54(bb) of this chapter must include a plan for removal of the spent fuel stored under this general license from the reactor site. The plan must show how the spent fuel will be managed before starting to decommission systems and components needed for moving, unloading, and shipping this spent fuel.

(b) Spent fuel previously stored may continue to be stored under this general license during decommissioning after submission of an application for termination of the reactor operating license under § 50.82 of this chapter. An application for termination of the reactor operating license submitted under § 50.82 of this chapter must, however, contain a description of how the spent fuel stored under this general license will be removed from the reactor site. If the decommissioning alternative selected under § 50.82 is likely to extend beyond 30 years after the normal term of the reactor operating license, the licensee shall include in the application a discussion of incremental environmental impacts of the extended spent fuel storage.

(c) The reactor licensee shall send a copy of submittals under §§ 72.218 (a) and (b) to the Administrator of the appropriate Nuclear Regulatory Commission regional office shown in Appendix D to Part 20 of this Chapter.

**§ 72.220 Violations.**

Storage of spent fuel under a general license may be halted or terminated under § 72.84.

## Subpart L—Approval of Spent Fuel Storage Casks

**§ 72.230 Procedures for spent fuel storage cask submittals.**

(a) An application must be submitted in accordance with the instructions contained in § 72.4. A safety analysis report describing the proposed cask design and how the cask should be used to store spent fuel safely must be included with the application.

(b) Casks that have been certified for transportation of spent fuel under Part 71 of this chapter may be approved for storage of spent fuel under this subpart. An application must be submitted in accordance with the instructions contained in § 72.4. A copy of the Certificate of Compliance issued by the NRC for the cask, and drawings and other documents referenced in the certificate, must be included with the application. A safety analysis report showing that the cask is suitable for storage of spent fuel for a period of at least 20 years must also be included.

(c) Public inspection. An application for the approval of a cask for storage of spent fuel may be made available for public inspection under § 72.20.

(d) Fees. Fees for review and evaluation related to issuance of a spent fuel storage cask Certificate of Compliance, inspections related to spent fuel storage in approved casks on reactor sites, and vendor inspection of dry storage casks are those shown in § 170.31 of this chapter.

**§ 72.232 Inspection and tests.**

(a) The applicant shall permit, and make provisions for, the Commission to inspect at reasonable times the premises and facilities at which a spent fuel storage cask is fabricated and tested.

(b) The applicant shall perform, and make provisions that permit the Commission to perform, tests that the Commission deems necessary or appropriate for the administration of the regulations in this part.

(c) The applicant shall submit a notification under § 72.4 at least 45 days prior to starting fabrication of the first spent fuel storage cask under a Certificate of Compliance.

**§ 72.234 Conditions of approval.**

(a) Design, fabrication, testing, and maintenance of a spent fuel storage cask must comply with the technical criteria in § 72.236.

(b) Design, fabrication, testing, and maintenance of spent fuel storage casks must be conducted under a quality assurance program that meets the requirements of Subpart G of this part.

(c) Cask fabrication must not start prior to receipt of the Certificate of Compliance for the cask model.

(d)(1) The cask vendor shall ensure that a record is established and maintained for each cask fabricated under the NRC Certificate of Compliance.

(2) This record must include:

(i) The NRC Certificate of Compliance number;

(ii) The cask model number;

(iii) The cask identification number;

(iv) Date fabrication started;

(v) Date fabrication completed;

(vi) Certification that the cask was designed, fabricated, tested, and repaired in accordance with a quality assurance program accepted by NRC;

(vii) Certification that inspections required by § 72.236(j) were performed and found satisfactory; and

(viii) The name and address of the cask user.

(3) The original of this record must be supplied to the cask user. A copy of the current composite record of all casks, showing the above information, must be retained by the cask vendor for the life of the cask. If the cask vendor permanently ceases production of casks under a Certificate of Compliance, this record must be sent to the Commission using instructions in § 72.4.

(e) The composite record required by paragraph (d) of this section must be made available to the Commission for inspection.

(f) The cask vendor shall ensure that written procedures and appropriate tests are established for use of the casks. A copy of these procedures and tests must be provided to each cask user.

**§ 72.236 Specific criteria for spent fuel storage cask approval.**

(a) Specifications concerning the spent fuel to be stored in the cask, such as the type of spent fuel (i.e., BWR, PWR, both), enrichment of the unirradiated fuel, burn-up (i.e., megawatt-days/MTU), cooling time of the spent fuel prior to storage in the cask, maximum heat designed to be dissipated (i.e., kw/assembly, kw/rod), the maximum spent fuel loading limit, and condition of the spent fuel (i.e., intact assembly or consolidated fuel rods), inerting atmosphere requirements, must be provided.

(b) Design bases and design criteria must be provided for structural members and systems important to safety.

(c) The cask must be designed and fabricated so that the spent fuel is maintained in a subcritical condition under credible conditions.

(d) Radiation shielding and confinement features must be provided to the extent required to meet the requirements in §§ 72.104 and 72.106 of this part .

(e) Casks must be designed to provide redundant sealing of confinement systems.

(f) Casks must be designed to provide adequate heat removal capacity without active cooling systems.

(g) Casks must be designed to store the spent fuel safely for a minimum of 20 years and permit maintenance as required.

(h) Casks must be compatible with

wet or dry spent fuel loading and unloading facilities.

(i) Casks must be designed to facilitate decontamination to the extent practicable.

(j) Casks must be inspected to ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce their confinement effectiveness.

(k) Casks must be conspicuously and durably marked with

(1) A model number;

(2) A unique identification number; and

(3) An empty weight.

(l) Casks and systems important to safety must be evaluated, by subjecting a sample or scale model to tests appropriate to the part being tested, or by other means acceptable to the Commission, demonstrating that they will reasonably maintain confinement of radioactive material under normal, off-normal, and accident conditions.

(m) To the extent practicable, in the design of dry spent fuel storage casks, consideration should be given to the compatibility of the dry storage cask systems and components with transportation and other activities related to the removal of the stored spent fuel from the reactor site for ultimate disposition by the Department of Energy.

**§ 72.238 Issuance of an NRC Certificate of Compliance.**

A Certificate of Compliance for a cask model will be issued by NRC on a finding that

(a) The criteria in § 72.236 (a) through (i) are met; and

(b) The applicant certifies that each cask will be fabricated, inspected, and tested in accordance with § 72.236 (j) and (l).

**§ 72.240 Conditions for spent fuel storage cask reapproval.**

(a) The holder of a cask model Certificate of Compliance, a user of a cask model approved by NRC, and representatives of cask users may apply for a cask model reapproval.

(b) Application for reapproval of a cask model must be submitted 3 years prior to the date that the Certificate of Compliance for that model expires. The application must be accompanied by a safety analysis report (SAR). The new SAR may reference the SAR originally submitted for the cask model.

(c) A cask model will be reapproved if conditions in § 72.238 are met, including demonstration that storage of spent fuel has not significantly, adversely affected systems and components important to safety.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation of Part 50 continues to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 50.72, a new paragraph (b)(2)(vii) is added to read as follows:

**§ 50.72 Immediate notification requirements for operating nuclear power reactors.**

* * * * *

(b) * * *

* * * * *

(2) * * *

(vii)(A) Any instance in which a significant defect in a system or component important to safety is discovered in, or (B) any instance in which there is a significant reduction in the confinement system effectiveness of, any cask used to store spent fuel under § 72.210 of this chapter.

* * * *

## PART 170—FEES FOR FACILITIES AND MATERIALS LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

6. The authority citation for Part 170 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

7. In § 170.31, a new category 13 is added and Footnotes 1 (b), (c), and (d) are revised to read as follows:

**§ 70.31 Schedule of fees for materials licenses and other regulatory services, including inspections.**

* * * * *

| Category of materials licenses and type of fee [1] | Fee [2] [3] |
|---|---|
| * * * * * | |
| 13. A. Spent fuel storage cask Certificate of Compliance: | |
| Application | $150 |
| Approvals | Full cost. |
| Amendments, revisions and supplements. | Full cost. |
| Reapproval | Full cost. |
| B. Inspections of spent fuel storage cask Certificate of Compliance: | |
| Routine | Full cost. |
| Nonroutine | Full cost |
| C. Inspections of storage of spent fuel under § 72.210: | |
| Routine | Full cost. |
| Nonroutine | Full cost. |

[1] Types of fees. * * *

* * * * *

(b) *License/approval fees*—For new licenses and approvals issued in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11, 12, and 13 the recipient shall pay the license or approval fee as determined by the Commission in accordance with § 170.12 (b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of materials licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that applications for renewal of licenses and approvals in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11, and 13 must be accompanied by an application fee of $150, with the balance due upon notification by the Commission in accordance with the procedures specified in § 170.12(d).

(d) *Amendment fees*—Applications for amendments must be accompanied by the prescribed amendment fees. An application for an amendment to a license or approval classified in more than one category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply, except that applications for amendment of licenses and approvals in fee Categories 1A and 1B, 2A, 4A, 5B, 10A, 10B, 11, 12, and 13 must be accompanied by an application fee of $150 with the balance due upon notification by the Commission in accordance with § 170.12(c).

An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

Applications to terminate licenses authorizing small materials programs, when no dismantling or

decontamination procedure is required, shall not be subject to fees.

* * * * *

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 89-10751 Filed 5-4-89; 8:45 am]

BILLING CODE 7590-01-M

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**10 CFR Parts 50 and 73**

## Nuclear Power Plant Access Authorization Program

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has planned a public meeting with the Nuclear Management and Resources Council (NUMARC) to consider the public comments on the Industry Guidelines for the Nuclear Power Plant Access Authorization Program (Guidelines).

**DATE:** The meeting will be held on Thursday, May 11, 1989, and begin at 9:00 a.m.

**ADDRESS:** U.S. Nuclear Regulatory Commission, Room 8B11, One White Flint North, 11555 Rockville Pike, Rockville, MD.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra D. Frattali, Regulation Development Branch, NL/S-139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-3773.

**SUPPLEMENTARY INFORMATION:** On March 9, 1988, the Commission published for public comment a proposed policy statement on the Nuclear Power Plant Access Authorization Program (53 FR 7534). Revision 8 of the NUMARC Guidelines was included as an Appendix. Numerous public comments were received on the Guidelines. The purpose of the meeting is to discuss the issues that have emerged as a result of the public comments.

Dated at Rockville, Maryland, this 1st day of May 1989.

For the Nuclear Regulatory Commission.

**Bill M. Morris,**

*Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 89-10854 Filed 5-4-89; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Ch. I**

**[Summary Notice No. PR-89-4]**

## Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: July 4, 1989.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132..

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 1, 1989.

**Denise Donohue Hall,**

*Manager, Program Management Staff, Office of the Chief Counsel.*

### Petitions for Rulemaking

*Docket No:* 25847.

*Petitioner:* Mr. Sam J. Cultrera.

*Regulations Affected:* 14 CFR 43.11.

*Description of Petition/Disposition:* The petitioner would add the requirement to enter an annual inspection in the records of the engine, propeller or both, when an annual inspection was performed on the aircraft and the owner/operator has elected to maintain separate records for the engine, propeller or both.

*Petitioner's Reason for the Request:* Safety is being compromised because an engine could conceivably be sitting for some time with hours still remaining on the last 100-hour inspection as recorded in the engine log and then be flown without the benefit of an annual inspection.

*Docket No.:* 25759.

*Petitioner:* Air Transport Association of America and Regional Airline Association.

*Regulations Affected:* 14 CFR 121.585 and 121.586.

*Description of Petition:* The Air Transport Association of America (ATA) and the Regional Airline Association (RAA) have petitioned the FAA to institute an informal rulemaking proceeding to address certain issues concerning transportation of persons with disabilities. The specific issues which ATA identified are: (1) The definition of the term "otherwise qualified handicapped individual" as that term is used in the Air Carrier Access Act of 1986, 49 U.S.C. 1374(c); (2) air carrier authority to refuse service; (3) air carrier authority to require a passenger to be accompanied by an attendant; and (4) air carrier authority to restrict certain seats. ATA also requests that the FAA review and approve air carrier training programs concerning transportation of persons with disabilities.

Pending completion of the requested informal rulemaking, ATA has requested the issuance of a policy statement concerning air carrier authority over safety issues related to operations. Specifically, ATA requests the FAA to affirm air carrier authority and discretion to make judgments concerning specific individuals, their potential for adversely imparting the safety of other passengers and crewmembers and to improve reasonable restrictions on such individual.

*Petitioners' Reason for the Rule:* It is ATA's position that the issues enumerated above are safety issues over which the FAA has exclusive jurisdiction to regulate. ATA argues that unless the FAA issues the proposed regulations which affirm air carrier

authority to distinguish among passengers and apply reasonable restrictions to persons with differing disabilities and levels of capabilities, public safety will be impaired and air carriers will be unable to meet their statutory obligation to operate with the highest degree of safety in the public interest.

[FR Doc. 89-10859 Filed 5-4-89; 8:45 am]
BILLING CODE 4910-B-M

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**14 CFR Part 71**

**[Airspace Docket No. 89-AGL-10]**

## Proposed Transition Area Establishment; Mandan, ND

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish the Mandan, ND, transition area to accommodate a new VOR-A Standard Instrument Approach Procedure (SIAP) to Mandan Municipal Airport, Mandan, ND. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**DATES:** Comments must be received on or before June 21, 1989.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 89-AGL-10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AGL-10". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

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

### The Proposal

The FAA is considering an amendment to Section 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Mandan, ND.

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

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

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

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

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### The Proposed Amendment

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

### PART 71—[AMENDED]

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

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

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Mandan, ND [New]**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Mandan Municipal Airport (lat. 46°46'07" N., long. 100°53'37" W.); within 4.75 miles each side of the 092° bearing from Mandan Municipal Airport, extending from the 5-mile radius to 11 miles east of the airport, excluding that portion which overlies the Bismarck, ND, transition area.

Issued in Des Plaines, Illinois, on April 19, 1989.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 89-10787 Filed 5-4-89; 8:45 am]
BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[PS-217-84]**

**RIN: 1545-AH49**

**Golden Parachute Payments**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to golden parachute payments. Changes to the applicable tax law were made by the Tax Reform Act of 1984, the Tax Reform Act of 1986, and the Technical and Miscellaneous Revenue Act of 1988. The regulations will provide guidance to taxpayers who must comply with section 280G of the Internal Revenue Code of 1986.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by July 5, 1989. Generally, these regulations are proposed to be effective for payments made under agreements entered into or renewed after June 14, 1984. These regulations also are proposed to be effective for certain payments under agreements entered into on or before June 14, 1984, and amended or supplemented in significant relevant respect after that date.

**ADDRESS:** Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (PS-217-84), Room 4429, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Stuart G. Wessler, 202-566-6016, or Robert Misner, 202-566-4752 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 280G of the Internal Revenue Code. These amendments are proposed to conform the Income Tax Regulations to section 67 of the Tax Reform Act of 1984 (Pub. L. No. 98-369; 98 Stat. 585), which added sections 280G and 4999 to the Code and amended Code sections 275(a)(6) and 3121(v)(2)(A), and to section 1804(j) of the Tax Reform Act of 1986 (Pub. L. No. 99-514; 100 Stat. 2807) and section 1018(d) (6)-(8) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647; 102 Stat. 3581), which amended Code section 280G. These provisions relate to golden parachute payments. Specifically, section 280G denies a deduction for any "excess parachute payment," section 4999 imposes a 20-percent excise tax on the recipient of any excess parachute payment, section 275(a)(6) denies a deduction for the section 4999 excise tax, and section 3121(v)(2)(A) relates to FICA.

### Overview of Statutory Provisions

In applying the golden parachute provisions, the first step is to identify payments that constitute "parachute payments." Section 280G(b)(2)(A) defines a "parachute payment" as any payment that meets all of the following four conditions: (a) The payment is in the nature of compensation; (b) the payment is to, or for the benefit of, a disqualified individual; (c) the payment is contingent on a change in the ownership of a corporation, the effective control of a corporation, or the ownership of a substantial portion of the assets of a corporation ("change in ownership or control"); and (d) the payment has (together with other payments described above in (a), (b), and (c) with respect to the same individual) an aggregate present value of at least 3 times the individual's base amount.

For this purpose, an individual's base amount is, in general, the individual's average annualized includible compensation for the most recent 5 taxable years ending before the change in ownership or control.

Section 280G(b)(2)(B) provides that the term "parachute payment" also includes any payment in the nature of compensation to, or for the benefit of, a disqualified individual if the payment is pursuant to an agreement that violates any generally enforced securities laws or regulations ("securities violation parachute payment").

Once payments are identified as "parachute payments", the next step is to determine any "excess" portion of the payments. Section 280G(b)(1) defines the term "excess parachute payment" as an amount equal to the excess of any parachute payment over the portion of the disqualified individual's base amount that is allocated to such payment. For this purpose, the portion of the base amount allocated to a parachute payment is the amount that bears the same ratio to the base amount as the present value of the parachute payment bears to the aggregate present value of all such payments to the same disqualified individual.

Generally, excess parachute payments may be reduced by certain amounts of reasonable compensation. Section 280G(b)(4)(B) provides that except in the case of securities violation parachute payments, the amount of an excess parachute payment is reduced by any portion of the payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of change in ownership or control. Such reasonable compensation is first offset against the portion of the base amount allocated to the payment.

### Exempt Payments

Section 280G specifically exempts several types of payments from the definition of the term "parachute payment."

Deductions for payments exempt from the definition of "parachute payment" are not disallowed by section 280G, and such exempt payments are not subject to the 20-percent excise tax of section 4999. In addition, such exempt payments are not taken into account in applying the threetimes-base-amount test of section 280G(b)(2)(A)(ii).

Section 280G(b)(5) provides an exemption for payments with respect to certain corporations. Pursuant to that section, the term "parachute payment" does not include any payment made to a disqualified individual with respect to a corporation which, immediately before the change in ownership or control, was a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof). In addition, the term "parachute payment" does not include any payment made with respect to a corporation if, immediately before the change in ownership or control, no stock in the corporation was readily tradable on an established securities market (or otherwise) and certain shareholder approval requirements are met with respect to the payment. For this purpose, stock that is described in section 1504 (a)(4) is not treated as being readily tradable on an established securities market if the payment does not adversely affect the shareholder's redemption and liquidation rights. The proposed regulations provide guidance on applying the exemptions contained in section 280G(b)(5).

Section 280G(b)(6) exempts certain payments under a qualified plan. Pursuant to that section, the term "parachute payment" does not include any payment to or from: (a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a); (b) an annuity plan described in section 403(a); or (c) a simplified employee pension as defined in section 408(k).

Finally, section 280G(b)(4)(A) exempts certain payments of reasonable

compensation. Pursuant to that section, except in the case of securities violation parachute payments, the term "parachute payment" does not include the portion of any payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change in ownership or control. The proposed regulations provide guidance for determining amounts of reasonable compensation.

**Disqualified Individuals**

To be a parachute payment, a payment must be made to (or for the benefit of) a "disqualified individual." Section 280G(c) defines the term "disqualified individual" to include any individual who (a) is an employee or independent contractor who performs personal services for a corporation, and (b) is an officer, shareholder, or highlycompensated individual. The proposed regulations provide guidance on who will be treated as an "officer," a "shareholder," and a "highly-compensated individual" for this purpose.

Section 280G(c) provides that a "highly-compensated individual" with respect to a corporation only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the 250 highest paid employees of the corporation. The proposed regulations provide rules for applying this definition. In addition, the proposed regulations provide that no individual whose annual compensation is less than $75,000 will be treated as a highly compensated individual. The proposed regulations also provide an exception to the definition of "highly-compensated individual" to prevent fees earned by independent service providers (such as independent brokers, attorneys, and investment bankers) from becoming subject to section 280G when they perform services in connection with a change in ownership or control.

With respect to who will be treated as a "shareholder" for purposes of section 280G(c), the proposed regulations provide a *de minimis* rule. Pursuant to this rule, only an individual who owns stock of a corporation having a value that exceeds the lesser of $1 million, or 1 percent of the total value of the outstanding shares of all classes of the corporation's stock, is treated as a disqualified individual with respect to the corporation by reason of stock ownership. For purposes of determining the amount of the stock owned by an individual, the constructive ownership rules of section 318(a) shall apply.

The proposed regulations also limit the number of employees who will be treated as disqualified individuals with respect to a corporation by reason of being "officers" of the corporation. The proposed regulations provide that no more than 50 employees (or, if less, the greater of 3 employees or 10 percent of the employees of the corporation) will be treated as disqualified individuals with respect to a corporation by reason of being an officer of the corporation. In the case of an affiliated group treated as one corporation, the previous sentence will be applied to each member of such group.

**Contingent on Change**

To be a parachute payment, a payment must be contingent on a change in ownership or control. The proposed regulations provide rules on when a payment will be treated as so "contingent."

In general, a payment will be treated as contingent on a change in ownership or control if the payment would not in fact have been made had no change in ownership or control occurred. A payment generally will be treated as one which would not in fact have been made in the absence of a change in ownership or control unless it is substantially certain, at the time of the change, that the payment would have been made whether or not the change occurred. In addition, a payment generally is treated as contingent on a change in ownership of control if (a) the payment is contingent on an event that is closely associated with such a change, (b) a change in ownership or control actually occurs, and (c) the event is materially related to the change in ownership or control. Some types of events that are considered closely associated with a change in ownership or control are the onset of a tender offer, the termination of the disqualified individual's employment, and a significant reduction in the disqualified individual's job responsibilities.

Moreover, a payment will be treated as contingent on a change in ownership or control if the change accelerates the time at which the payment is made. However, if it is substantially certain at the time of the change that the payment would have been made whether or not the change occurred, but the payment is treated as contingent on the change solely because the change accelerates the time at which the payment is made, only a portion of the payment will be treated as contingent on the change. In such case, the portion of the payment that will be treated as contingent on the change is the amount by which the amount of the accelerated payment exceeds the present value of the payment absent the acceleration. In addition, if a payment is accelerated by a change in ownership or control and the payment is substantially certain, at the time of the change, to have been made without regard to such change provided that the disqualified individual had continued to perform services for the corporation for a specified period of time, only a portion of the payment is treated as contingent on the change. The proposed regulations provide rules for determining the portion of the payment so treated. The proposed regulations provide that payments made pursuant to an agreement that is entered into after a change in ownership or control will not be treated as contingent on the change. However, for this purpose, an agreement that is executed after a change in ownership or control pursuant to a legally enforceable agreement that was entered into before the change will be considered to have been entered into before the change.

**Presumption That Payment Is Contingent on Change**

Section 280G(b)(2)(C) provides a presumption that certain payments are contingent on a change in ownership or control. Specifically, this provision provides that any payment pursuant to an agreement (or an amendment of a previous agreement) that is entered into within one year before a change in ownership or control is presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

The proposed regulations provide that an amendment of a previous agreement triggers this presumption only if the previous agreement is amended "in any significant respect." The proposed regulations also provide that when the presumption is triggered by an amendment, only the portion of a payment that exceeds the amount of such payment that would have been made in the absence of the amendment is presumed, by reason of the amendment, to be contingent on the change in ownership or control.

In addition, the proposed regulations provide that if an agreement is entered into within one year before the date of a change in ownership or control, clear and convincing evidence that the agreement is (a) a nondiscriminatory employee plan or program; (b) a contract that replaces a prior contract entered into by the same parties more than one year before the change in ownership or control (if the new contract meets

certain requirements); or (c) a contract between a corporation and a disqualified individual who did not perform services for the corporation prior to the individual's taxable year in which the change in ownership or control occurs (if the contract meets certain requirements); generally will rebut the presumption that payments under the agreement are contingent on the change.

**Change in Ownership or Control**

The proposed regulations also provide guidance on when a change in ownership or control will be considered to occur. The regulations provide that a change in the ownership of a corporation occurs when any one person, or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, has more than 50 percent of the total fair market value or voting power of all of the corporation's outstanding stock. Section 318(a) will apply in determining stock ownership for this purpose.

The proposed regulations provide that a change in the ownership of a substantial portion of the assets of a corporation occurs when any one person, or more than one person acting as a group, acquires (or has acquired during the 12 months ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total fair market value equal to or more than one third of the total fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. However, the proposed regulations provide that a transfer of assets by a corporation will not be treated as a change in ownership if the assets are transferred to certain shareholders of the corporation or to an entity at least 50 percent of the total value or voting power of which is owned by the corporation.

Under the proposed regulations, a change in the effective control of a corporation is presumed to occur when either of the following events occurs: (a) Any one person, or more than one person acting as a group acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition) ownership of stock of the corporation possessing 20 percent or more of the total voting power of the stock of the corporation; or (b) a majority of the members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors prior to the appointment or election.

Under the proposed regulations, a taxpayer may rebut the presumption described in the preceding paragraph by establishing that such acquisition or acquisitions of the corporation's stock, or such replacement of the majority of the members of the corporation's board of directors, does not transfer the power to control (directly or indirectly) the management and policies of the corporation from any one person or group to another person or group.

**Securities Violation Parachute Payments**

The proposed regulation implement section 280G(b)(2)(B) by providing that the term "parachute payment" also includes any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made (a) pursuant to an agreement that violates any generally enforced Federal or State securities law or regulation, and (b) in connection with a potential or actual change in ownership or control. However, a violation will not be taken into account for this purpose if it is merely technical in character or is not materially prejudicial to shareholders or potential shareholders. Generally, a securities violation will be presumed not to exist unless the existence of the violation has been determined or admitted in a civil or criminal action (or an administrative action by a regulatory body charged with enforcing the particular securities law or regulation) which has been resolved by adjudication or consent.

**Reasonable Compensation**

As previously mentioned, section 280G(b)(4)(A) provides that except in the case of securities violation parachute payments, the amount of a payment treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change in ownership or control.

Section 280G(b)(4)(B) provides that except in the case of securities violation parachute payments, the amount of a payment treated as an excess parachute payment is reduced by any portion of the payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Such reasonable compensation is first offset against the portion of the base amount allocated to the payment.

The proposed regulations provide criteria for determining whether payments are reasonable compensation. In general, whether payments are reasonable compensation is determined on the basis of all the facts and circumstances in the particular case. Factors relevant to such a determination include the nature of the services rendered or to be rendered, the individual's historic compensation for performing such services, and the compensation of individuals performing comparable services in situations where the compensation is not contingent on the change. The proposed regulations also provide that payments made under certain nondiscriminatory employee plans or programs will generally be considered to be clear and convincing evidence that the payments are reasonable compensation.

Generally, clear and convincing evidence of reasonable compensation for personal services to be rendered on or after the change in ownership or control will not exist if the individual does not, in fact, perform the services. However, the proposed regulations provide that damages paid for the breach of an employment contract may be reasonable compensation for such services if certain factors are shown. One of these factors is that the damages must be reduced by mitigation. For this purpose, damages will be treated as being mitigated if the damages are reduced (or any payment of such damages is returned) to the extent of the disqualified individual's earned income during the remainder of the contract term. The proposed regulations do not provide a rule concerning the method of establishing mitigation of damages in other situations, such as where the disqualified individual does not accept alternative employment during the remainder of the contract term or where the individual and the corporation considered mitigation in determining the amount of a lump-sum settlement agreement, because the Service is concerned about the administrability of such a rule. Accordingly, the Service solicits comment on how a rule which would allow damages to be treated as mitigated in such cases could be administered.

Finally, the proposed regulations provide that for purposes of section 280G, severance payments will not be considered as reasonable compensation.

**Issues on Which Comments are Requested**

In addition to the issue concerning mitigation of damages, the Service

solicits comment on the following issues:

(a) How the present value of a payment to be made in the future should be determined if such value depends on some uncertain future event or condition (and what adjustments, if any, are to be made if the amount of the actual payment differs from the amount used in determining present value). See Q/A–31, Q/A–32, and Q/A–33 of the proposed regulations.

(b) How the special rules of section 280G should interact with special income deferral rules such as those contained in section 83. See Q/A–12 and Q/A–13 of the proposed regulations.

(c) Whether the rules for identifying the disqualified individuals of a corporation (including the rules relating to the time period that should be utilized to determine who the disqualified individuals are and how the compensation for such a time period should be determined) could be simplified. See Q/A–20 and Q/A–21 of the proposed regulations.

(d) How severance payments should be treated. See Q/A–44 of the proposed regulations.

(e) Whether any of the rules contained in the proposed regulations should be given only prospective effect.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Comments and Requests for a Public Hearing**

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

**Drafting Information**

The principal author of these proposed regulations is Stuart G. Wessler of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

**List of Subjects in 26 CFR 1.61–1—1.281–4**

Income taxes, Taxable income, Deductions, Exemptions.

**Proposed Amendments to the Regulations**

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

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

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

**Authority:** 26 U.S.C. 7805. * * * Section 1.280G–1 also issued under 26 U.S.C. 280G (b) and (e).

**Par. 2.** A new § 1.280G–1 is added to read as follows:

**§ 1.280G–1 Golden parachute payments.**

The following questions and answers relate to the treatment of golden parachute payments under section 280G of the Internal Revenue Code of 1986, as added by section 67 of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 585) and amended by section 1804 (j) of the Tax Reform Act of 1986 (Pub. L. No. 99–514; 100 Stat. 2807) and section 1018(d) (6)–(8) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647; 102 Stat. 3581). The following is a table of contents for this section:


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*Overview*

Q–1: What is the effect of Code section 280G?

A–1: Section 280G disallows a deduction for any "excess parachute payment" paid or accrued. For rules relating to the imposition of a nondeductible 20-percent excise tax on the recipient of any excess parachute

payment, see Code sections 4999, 275(a)(6), and 3121(v)(2)(A).

Q–2: What is a "parachute payment" for purposes of section 280G?

A–2: (a) The term "parachute payment" means any payment (other than a payment with respect to certain corporations exempted under Q/A–6 of this section, a payment under a qualified plan exempted under Q/A–8 of this section, or a payment of reasonable compensation exempted under Q/A–9 of this section) that—

(1) Is in the nature of compensation;

(2) Is made or is to be made to (or for the benefit of) a "disqualified individual;"

(3) Is contingent on a change—

(i) In the ownership of a corporation,

(ii) In the effective control of a corporation, or

(iii) In the ownership of a substantial portion of the assets of a corporation; and

(4) Has (together with other payments described in paragraph (a) (1), (2), and (3) of this A–2 with respect to the same disqualified individual) an aggregate present value of at least 3 times the individual's "base amount."

Hereinafter, a change referred to in paragraph (a)(3) of this A–2 is referred to as a "change in ownership or control." For a discussion of the application of paragraph (a)(1), see Q/A–11 through Q/A–14; paragraph (a)(2), Q/A–15 through Q/A–21; paragraph (a)(3), Q/A–22 through Q/A–29; and paragraph (a)(4), Q/A–30 through Q/A–36.

(b) The term "parachute payment" also includes any payment in the nature of compensation to (or for the benefit of) a disqualified individual that is pursuant to an agreement that violates a generally enforced securities law or regulation. This type of parachute payment is referred to in this section as a "securities violation parachute payment." See Q/A–37 for the definition and treatment of securities violation parachute payments.

Q–3: What is an "excess parachute payment" for purposes of section 280G?

A–3: The term "excess parachute payment" means an amount equal to the excess of any parachute payment over the portion of the "base amount" allocated to such payment. Subject to certain exceptions and limitations, an excess parachute payment is reduced by any portion of the payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. For a discussion of the computation of excess parachute payments and their reduction by reasonable compensation, see Q/A–38 through Q/A–44. For a discussion of the nonreduction of a securities violation parachute payment by reasonable compensation, see Q/A–37.

Q–4: What is the effective date of section 280G and this section?

A–4: In general, section 280G and this section apply to payments under agreements entered into or renewed after June 14, 1984. Section 280G and this section also apply to certain payments under agreements entered into on or before June 14, 1984, and amended or supplemented in significant relevant respect after that date. For a discussion of the application of the effective date, see Q/A–47 through Q/A–52.

*Exempt Payments*

Q–5: Are some types of payments exempt from the definition of the term "parachute payment"?

A–5: Yes. The following four types of payments are exempt from the definition of "parachute payment": (a) Payments with respect to a small business corporation (described in Q/A–6 of this section); (b) certain payments with respect to a corporation no stock in which is readily tradable on an established securities market (or otherwise) (described in Q/A–6 of this section); (c) payments to or from a qualified plan (described in Q/A–8 of this section); and (d) certain payments of reasonable compensation (described in Q/A–9 of this section). Deductions for payments exempt from the definition of "parachute payment" are not disallowed by section 280G, and such exempt payments are not subject to the 20-percent excise tax of section 4999. In addition, such exempt payments are not taken into account in applying the three-times-base-amount test of Q/A–30 of this section.

Q–6: Which payments with respect to a corporation referred to in paragraph (a) or (b) of A–5 of this section are exempt from the definition of "parachute payment"?

A–6: (a) The term "parachute payment" does not include—

(1) Any payment to a disqualified individual with respect to a corporation which (immediately before the change in ownership or control) was a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof), or

(2) Any payment to a disqualified individual with respect to a corporation (other than a small business corporation described in paragraph (a)(1) of this A–6) if—

(i) Immediately before the change in ownership or control, no stock in such corporation was readily tradable on an established securities market or otherwise, and

(ii) The shareholder approval requirements described in Q/A–7 of this section are met with respect to such payment.

(b) For purposes of paragraph (a)(1) of this A–6, the members of an affiliated group are not treated as one corporation.

(c) The requirements of paragraph (a)(2)(i) of this A–6 are not met if a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and any ownership interest in such entity is readily tradable on an established securities market or otherwise. For this purpose, such stock constitutes a substantial portion of the assets of an entity if the total fair market value of the stock is equal to or more than one third of the total fair market value of all of the assets of the entity. If a corporation is a member of an affiliated group (which group is treated as one corporation under A–46 of this section), the requirements of paragraph (a)(2)(i) of this A–6 are not met if any stock in any member of such group is readily tradable on an established securities market or otherwise.

(d) For purposes of paragraph (a)(2)(i) of this A–6, the term "stock" does not include stock described in section 1504(a)(4) if the payment does not adversely affect the redemption and liquidation rights of any shareholder owning such stock.

(e) For purposes of paragraph (a)(2)(i) of this A–6, stock shall be treated as readily tradable if it is regularly quoted by brokers or dealers making a market in such stock.

(f) For purposes of paragraph (a)(2)(i) of this A–6, the term "established securities market" means an established securities market as defined in § 1.897–1(m).

(g) The following examples illustrate the application of this exemption:

*Example (1).* A small business corporation (within the meaning of paragraph (a)(1) of this section) operates two businesses. The corporation sells the assets of one of its businesses, and these assets represent a substantial portion of the assets of the corporation. Because of the sale, the corporation terminates its employment relationship with persons employed in the business the assets of which are sold. Several of these employees are highly-compensated individuals to whom the owners of the corporation make severance payments in excess of 3 times each employee's base amount. Since the corporation is a small

business corporation immediately before the change in ownership or control, the payments are not parachute payments.

*Example (2).* Assume the same facts as in example (1), except that the corporation is not a small business corporation within the meaning of paragraph (a)(1) of this section. If no stock in the corporation is readily tradable on an established securities market (or otherwise) immediately before the change in ownership or control and the shareholder approval requirements described in Q/A–7 of this section are met, the payments are not parachute payments.

*Example (3).* Seventy percent of the stock of Corporation S is owned by Corporation P, stock in which is readily tradable on an established securities market. The Corporation S stock represents a substantial portion of the assets of Corporation P. Corporation P sells all of its stock in Corporation S to Corporation X. Because of the sale, Corporation S makes severance payments to several of its highly-compensated individuals in excess of 3 times each individual's base amount. Since stock in Corporation P is readily tradable on an established securities market, the payments are not exempt from the definition of "parachute payments" under this A–6.

Q–7: How are the shareholder approval requirements referred to in paragraph (a)(2)(ii) of A–6 of this section met?

A–7: (a) The shareholder approval requirements referred to in paragraph (a)(2)(ii) of A–6 of this section are met with respect to any payment if—

(1) Such payment was approved by a separate vote of the persons who owned, immediately before the change in ownership or control, more than 75 percent of the voting power of all outstanding stock of the corporation, and

(2) There was adequate disclosure, to all persons entitled to vote under paragraph (a)(1) of this A–7, of all material facts concerning all material payments which (but for Q/A–6 of this section) would be parachute payments with respect to a disqualified individual.

The vote described in paragraph (a)(1) of this A–7 must determine the right of the disqualified individual to receive the payment, or, in the case of a payment made before the vote, the right of the disqualified individual to retain the payment.

(b) Approval of a payment by any shareholder that is not an individual ("entity shareholder") generally must be made by the person authorized by the entity shareholder to approve the payment. However, if a substantial portion of the assets of an entity shareholder consists (directly or indirectly) of stock in the corporation undergoing the change in ownership or control, approval of the payment by that entity shareholder must be made by a separate vote of the persons who hold, immediately before the change in ownership or control, more than 75 percent of the voting power of the entity shareholder. The preceding sentence does not apply if the value of the stock of the corporation owned, directly or indirectly, by or for the entity shareholder does not exceed 1 percent of the total value of the outstanding stock of the corporation. Where approval of a payment by an entity shareholder must be made by a separate vote of the owners of the entity shareholder, the normal voting rights of the entity shareholder determine which owners shall vote.

(c) In determining the persons who comprise the "more than 75 percent" group referred to in paragraph (a)(1) of this A–7, stock is not counted as outstanding stock if the stock is actually owned or constructively owned under section 318(a) by or for a disqualified individual who receives (or is to receive) payments that would be parachute payments if the shareholder approval requirements described in paragraph (a) of this A–7 were not met. Likewise, stock is not counted as outstanding stock if the owner is considered under section 318(a) to own any part of the stock owned directly or indirectly by or for a disqualified individual described in the preceding sentence. However, if all persons who hold voting power in the corporation or the entity shareholder are disqualified individuals or related persons described in either of the two preceding sentences, then stock owned by such persons is counted as outstanding stock.

(d) To be adequate disclosure for purposes of paragraph (a)(2) of this A–7, disclosure must be full and truthful disclosure of the material facts and such additional information as is necessary to make the disclosure not materially misleading at the time the disclosure was made. An omitted fact is considered a material fact if there is a substantial likelihood that a reasonable shareholder would consider it important.

(e) The following examples illustrate the application of this A–7:

*Example (1).* Corporation S has two shareholders— Corporation P, which owns 76 percent of the stock of Corporation S, and A, an individual. No stock of Corporation P is readily tradable on an established securities market (or otherwise). Stock of Corporation S represents a substantial portion of the assets of Corporation P. All of the stock of Corporation S is sold to Corporation M. Contingent on the change in ownership of Corporation S, severance payments are made to the officers of Corporation S in excess of 3 times each officer's base amount. If the payments are approved by a separate vote of the persons who hold, immediately before the sale, more than 75 percent of the voting power of the outstanding stock of Corporation P and the disclosure rules of paragraph (a)(2) of this A–7 are compiled with, the shareholder approval requirements of this A–7 are met, and the payments are exempt from the definition of "parachute payment" pursuant to A–6 of this section.

*Example (2).* Corporation M is wholly owned by Partnership P, no interest in which is readily tradable on an established securities market (or otherwise). Stock of Corporation M represents a substantial portion of the assets of Partnership P. Partnership P has one general partner and 200 limited partners. None of the limited partners are entitled to vote on issues involving the management of the partnership investments. If the payments are approved by the general partner and the disclosure rules of paragraph (a)(2) of this A–7 are complied with, the shareholder approval requirements of this A–7 are met, and the payments are exempt from the definition of "parachute payment" pursuant to A–6 of this section.

Q–8: Which payments under a qualified plan are exempt from the definition of "parachute payment"?

A–8: The term "parachute payment" does not include any payment to or from—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(b) An annuity plan described in section 403(a), or

(c) A simplified employee pension (as defined in section 408(k)).

Q–9: Which payments of reasonable compensation are exempt from the definition of "parachute payment"?

A–9: Except in the case of securities violation parachute payments, the term "parachute payment" does not include any payment (or portion thereof) which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered by the disqualified individual on or after the date of the change in ownership or control. See Q/A–38 through Q/A–44 for rules on determining amounts of reasonable compensation. See Q/A–37 for the definition and treatment of securities violation parachute payments.

*Payor of Parachute Payments*

Q–10: Who may be the payor of parachute payments?

A–10: Parachute payments within the meaning of Q/A–2 of this section may be paid directly or indirectly by the corporation referred to in paragraph (a)(3) of A–2 of this section, by a person acquiring ownership or effective control of that corporation or ownership of a substantial portion of that corporation's assets, or by any person whose relationship to such corporation or other

person is such as to require attribution of stock ownership between the parties under section 318(a).

*Payments in the Nature of Compensation*

Q–11: What types of payments are in the nature of compensation?

A–11: (a) In general, for purposes of this section, all payments—in whatever form—are payments in the nature of compensation if they arise out of an employment relationship or are associated with the performance of services. For this purpose, the performance of services includes holding oneself out as available to perform services and refraining from performing services (such as under a covenant not to compete or similar arrangement). Payments in the nature of compensation include (but are not limited to) wages and salary, bonuses, severance pay, fringe benefits, and pension benefits and other deferred compensation (including any amount characterized by the parties as interest thereon). However, payments in the nature of compensation do not include attorney's fees or court costs paid or incurred in connection with the payment of any amount described in paragraph (a) (1), (2), and (3) of A–2 of this section.

(b) Transfers of property are treated as payments for purposes of this A–11. See Q/A–12 for rules on determining when such payments are considered made and the amount of such payments. See Q/A–13 for special rules on transfers of nonqualified stock options.

Q–12: If a property transfer to a disqualified individual is a payment in the nature of compensation, when is the payment considered made (or to be made), and how is the amount of the payment determined?

A–12: (a) Except as provided in this A–12 and A–13 of this section, a transfer of property is considered a payment made (or to be made) in the taxable year in which the property transferred is includible in the gross income of the disqualified individual under section 83 and the regulations thereunder. Thus, in general, such a payment is considered made (or to be made) when the property is transferred (as defined in § 1.83 3(a)] to the disqualified individual and becomes substantially vested (as defined in § 1.83–3(b)] in such individual. In such case, the amount of the payment is determined under section 83 and the regulations thereunder. Thus, in general, the amount of the payment is equal to the excess of the fair market value of the transferred property (determined without regard to any lapse restriction, as defined in § 1.83–3(i)) at the time that the property becomes substantially vested, over the amount (if any) paid for the property.

(b) An election made by a disqualified individual under section 83(b) with respect to transferred property will not apply for purposes of this A–12. Thus, even if such an election is made with respect to a property transfer that is a payment in the nature of compensation, the payment is generally considered made (or to be made) when the property is transferred to and becomes substantially vested in such individual.

(c) See Q/A–13 for rules on applying this A–12 to transfers of nonqualified stock options.

(d) *Example.* On January 1, 1986, Corporation M gives to A, a disqualified individual, in connection with his performance of services to Corporation M, a bonus of 100 shares of Corporation M stock. Under the terms of the bonus arrangement A is obligated to return the Corporation M stock to Corporation M unless the earnings of Corporation M double by January 1, 1989, or there is a change in ownership or control of Corporation M before that date. A's rights in the stock are treated as substantially nonvested (within the meaning of § 1.83–3(b)] during that period because A's rights in the stock are subject to a substantial risk of forfeiture (within the meaning of § 1.83–3(c)) and are nontransferable (within the meaning of § 1.83–3(d)). On January 1, 1988, a change in the ownership of Corporation M occurs. On that day, the fair market value of the Corporation M stock is $250 per share. Since A's rights in the Corporation M stock become substantially vested (within the meaning of § 1.83–3 (b)] on that day, the payment is considered made on that day, and the amount of the payment for purposes of this section is equal to $25,000 (100 × $250). See Q/A–39 for rules relating to the reduction of the excess parachute payment by the portion of the payment which is established to be reasonable compensation for personal services actually rendered before the date of a change in ownership or control.

Q–13: How are nonqualified stock options treated?

A–13: (a) For purposes of this section, if an option to which section 421 (relating generally to certain qualified and other options) does not apply has an ascertainable fair market value (whether or not readily ascertainable as defined in § 1.83–7(b)] at the time the option becomes substantially vested (as defined in § 1.83–3(b), the option shall be treated as property that is transferred not later than the time at which the option becomes substantially vested. Thus, for purposes of this section, the vesting of such an option is treated as a payment in the nature of compensation. The value of an option with a readily ascertainable fair market value at the time the option vests shall be determined by applying the rules set forth in § 1.83–7(b). The value of an option with an ascertainable fair market value at the time the option vests is determined under all the facts and circumstances in the particular case. Factors relevant to such a determination include, but are not limited to: (1) The difference between the option's exercise price and the value of the property subject to the option the time of vesting; (2) the probability of the value of such property increasing or decreasing; and (3) the length of the period during which the option can be exercised. See Q/A–33 for the treatment of options the vesting of which is contingent on a change in ownership or control and that do not have an ascertainable fair market value at the time of vesting.

(b) Any money or other property transferred to the disqualified individual upon the exercise, or as consideration upon the sale or other disposition, of an option described in paragraph (a) of this A–14 after the time such option vests is not treated as a payment in the nature of compensation to the disqualified individual under A–11 of this section. Nonetheless, the amount of the otherwise allowable deduction under section 162 or 212 with respect to such transfer shall be reduced by the amount of the payment described in paragraph (a) of this section treated as an excess parachute payment.

(c) [The issue of whether an option to which section 421 applies will be treated as a payment for purposes of this section at the time of grant or at a later time is reserved for future regulations.]

Q–14: Are payments in the nature of compensation reduced by consideration paid by the disqualified individual?

A–14: Yes. To the extent not otherwise taken into account under Q/A–12 and Q/A–13 of this section, the amount of any payment in the nature of compensation is reduced by the amount of any money or the fair market value of any property (owned by the disqualified individual without restriction) that is (or will be) transferred by the disqualified individual in exchange for the payment. For purposes of the preceding sentence, the fair market value of property is determined as of the date the property is transferred by the disqualified individual.

*Disqualified Individuals*

Q–15: Who is a "disqualified individual"?

A–15: For purposes of this section, an individual is a disqualified individual with respect to a corporation if, at any time during the "disqualified individual determination period" (as defined in Q/A–20 of this section), the individual is an employee or independent contractor

of the corporation and is, with respect to the corporation—

(a) A shareholder (but see Q/A–17),

(b) An officer (see Q/A–18), or

(c) A highly-compensated individual (see Q/A–19).

Q–16: Is a personal service corporation treated as an individual?

A–16: (a) Yes. For purposes of this section, a personal service corporation (as defined in section 269A(b)(1)), or a noncorporate entity that would be a personal service corporation if it were a corporation, is treated as an individual.

(b) Example. Corporation N, a personal service corporation (as defined in section 269A (b) (1)), has a single individual as its sole shareholder and employee. Corporation N performs personal services for Corporation M as an independent contractor. The compensation paid to Corporation N by Corporation M puts Corporation N within the group of the highly-compensated individuals of Corporation M as determined under A–18 of this section. Hence, Corporation N is treated as a highly-compensated individual with respect to Corporation M.

Q–17: Are all shareholders of a corporation considered shareholders for purposes of paragraph (a) of A–15 of this section?

A–17: No. Only an individual who owns stock of a corporation having a fair market value that exceeds the lesser of $1 million, or 1 percent of the total fair market value of the outstanding shares of all classes of the corporation's stock, is treated as a disqualified individual with respect to the corporation by reason of stock ownership. An individual who owns a lesser amount of stock may, however, be a disqualified individual with respect to the corporation by reason of being an officer or highly-compensated individual with respect to the corporation. For purposes of determining the amount of stock owned by an individual, the constructive ownership rules of section 318(a) shall apply.

Q–18: Who is an officer?

A–18: (a) For purposes of this section, whether an individual is an officer with respect to a corporation is determined upon the basis of all the facts and circumstances in the particular case (such as the source of the individual's authority, the term for which the individual is elected or appointed, and the nature and extent of the individual's duties). Generally, the term "officer" means an administrative executive who is in regular and continued service. The term "officer" implies continuity of service and excludes those employed for a special and single transaction. An individual who merely has the title of officer but not the authority of an officer is not considered an officer for purposes of this section. Similarly, an individual who does not have the title of officer but has the authority of an officer is an officer for purposes of this section.

(b) An individual who is an officer with respect to any member of an affiliated group that is treated as one corporation pursuant to Q/A–46 of this section is treated as an officer of such one corporation.

(c) No more than 50 employees (or, if less, the greater of 3 employees, or 10 percent of the employees (rounded up to the nearest integer)) of the corporation (in the case of an affiliated group treated as one corporation, each member of the affiliated group) shall be treated as disqualified individuals with respect to a corporation by reason of being an officer of the corporation. For purposes of the preceding sentence, the number of employees of the corporation is the greatest number of employees the corporation has during the disqualified individual determination period (as defined in Q/A–20 of this section). If the number of officers of the corporation exceeds the number of employees who may be treated as officers under the first sentence of this paragraph (c), then the employees who are treated as officers for purposes of this section are the highest paid 50 employees (or, if less, the greater of 3 employees, or 10 percent of the employees (rounded up to the nearest integer)) of the corporation when ranked on the basis of compensation (as determined under Q/A–21 of this section) paid during the disqualified individual determination period.

Q–19: Who is a "highly-compensated individual"?

A–19: (a) For purposes of this section, a "highly compensated individual" with respect to a corporation is any individual who is, or would be if the individual were an employee, a member of the group consisting of the lesser of (1) the highest paid 1 percent of the employees of the corporation (rounded up to the nearest integer), or (2) the highest paid 250 employees of the corporation, when ranked on the basis of compensation (as determined under Q/A–21 of this section) paid during the disqualified individual determination period (as defined in Q/A–20 of this section). However, no individual whose annualized compensation during the disqualified individual determination period is less than $75,000 will be treated as a highly-compensated individual.

(b) An individual who is not an employee of the corporation is not treated as a highly-compensated individual with respect to the corporation on account of compensation received for performing services (such as brokerage, legal, or investment banking services) in connection with a change in ownership or control of the corporation, if the services are performed in the ordinary course of the individual's trade or business and the individual performs similar services for a significant number of clients unrelated to the corporation.

(c) In determining the total number of employees of a corporation for purposes of this A–19, employees are not counted if they normally work less than 17½ hours per week (as defined in section 414(q)(8)(B) and the regulations thereunder) or if they normally work during not more than 6 months during any year (as defined in section 414(q)(8)(C) and the regulations thereunder). However, an employee who is not counted for purposes of the preceding sentence may still be a highly-compensated individual.

Q–20: What is the "disqualified individual determination period"?

A–20: (a) The "disqualified individual determination period" is the portion of the year of the corporation ending on the date of the change in ownership or control of the corporation (the "change in ownership period") and the twelve month period immediately preceding such change in ownership period. For purpose of this A–20, a corporation may elect to use its taxable year or the calendar year. For this purpose, the taxable year of an affiliated group treated as one corporation pursuant to Q/A–46 of this section is the taxable year of the common parent.

(b) The provisions of this A–20 may be illustrated by the following examples:

*Example (1).* A change in ownership of Corporation M, a calendar year corporation, takes place on June 12, 1988. The disqualified individual determination period of Corporation M begins on January 1, 1987 and ends on June 12, 1988.

*Example (2).* Assume the same facts as example (1), except that Corporation M is a fiscal year taxpayer with a taxable year ending on May 31. Corporation M may elect as its disqualified individual determination period either the period beginning on January 1, 1987, and ending on June 12, 1988, or the period beginning on June 1, 1987, and ending on June 12, 1988.

Q–21: How is "compensation" defined?

A–21: (a) For purposes of this section, the term "compensation" is the compensation which was payable by the corporation with respect to which the change in ownership or control occurs ("changed corporation"), by a

predecessor entity, or by a related entity. Such compensation shall be determined without regard to sections 125, 402(a)(8), and 402(h)(1)(B), and in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b). Thus, for example, compensation includes elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax-sheltered annuity.

(b) For purposes of this section, a "predecessor entity" is any entity which, as a result of a merger, consolidation, purchase or acquisition of property or stock, corporate separation, or other similar business transaction transfers some or all of its employees to the changed corporation or to a related entity or to a predecessor entity of the changed corporation. The term "related entity" includes: (1) All members of a controlled group of corporations (as defined in section 414(b)) that includes the changed corporation or a predecessor entity; (2) all trades or business (whether or not incorporated) that are under common control (as defined in section 414(c)) if such group includes the changed corporation or a predecessor entity; (3) all members of an affiliated service group (as defined in section 414(m)) that includes the changed corporation or a predecessor entity; and (4) any other entities required to be aggregated with the changed corporation or a predecessor entity pursuant to section 414(o) and the regulations thereunder (except leasing organizations as defined in section 414(n)).

(c) For purposes of Q/A–18 and Q/A–19 of this section, compensation that was contingent on the change in ownership or control and that was payable in the year of the change shall not be treated as compensation.

*Contingent on Change in Ownership or Control*

Q–22: When is a payment "contingent" on a change in ownership or control?

A–22: (a) In general, a payment is treated as "contingent" on a change in ownership or control if the payment would not, in fact, have been made had no change in ownership or control occurred. A payment generally is to be treated as one which would not, in fact, have been made in the absence of a change in ownership or control unless it is substantially certain, at the time of the change, that the payment would have been made whether or not the change occurred. (But see Q/A–23 of this section regarding payments under agreements entered into after a change in ownership or control.) Property that becomes substantially vested (as defined in § 1.83–3(b)) as a result of a change in ownership or control will not be treated as a payment which was substantially certain to have been made whether or not the change occurred.

(b) A payment is also generally treated as contingent on a change in ownership or control if

(1) The payment is contingent on an event that is closely associated with a change in ownership or control,

(2) a change in ownership or control actually occurs, and

(3) the event is materially related to the change in ownership or control.

For purposes of paragraph (b)(1) of this A–22, a payment is treated as contingent on an event that is closely associated with a change in ownership or control unless it is substantially certain, at the time of the event, that the payment would have been made whether or not the event occurred. An event is considered closely associated with a change in ownership or control if the event is of a type often preliminary or subsequent to, or otherwise closely associated with, a change in ownership or control. For example, the following events are considered closely associated with a change in the ownership or control of a corporation: The onset of a tender offer with respect to the corporation; a substantial increase in the market price of the corporation's stock that occurs within a short period (but only if such increase occurs prior to a change in ownership or control); the cessation of the listing of the corporation's stock on an established securities market; the acquisition of more than 5 percent of the corporation's stock by a person (or more than one person acting as a group) not in control of the corporation; the voluntary or involuntary termination of the disqualified individual's employment; and a significant reduction in the disqualified individual's job responsibilities. Whether other events will be treated as closely associated with a change in ownership or control will be based on all the facts and circumstances of the particular case. For purposes of paragraph (b)(3) of this A–22, an event will be presumed to be materially related to a change in ownership or control if the event occurs within the period beginning one year before and ending one year after the date of change in ownership or control. If such event occurs outside of the period beginning one year before and ending one year after the date of change in ownership or control, the event will be presumed not to be materially related to the change in ownership or control.

(c) A payment that would in fact have been made had no change in ownership or control occurred is treated as contingent on a change in ownership or control if the change accelerates the time at which the payment is made. Thus, for example, if a change in ownership or control accelerates the time of payment of vested deferred compensation, the payment may be treated as contingent on the change. See Q/A–24 regarding the portion of a payment that is so treated. See also Q/A–8 regarding the exemption for certain payments under qualified plans and Q/A–40 regarding treatment of a payment as reasonable compensation.

(d) A payment is treated as contingent on a change in ownership or control even if the employment or independent contractor relationship of the disqualified individual is not terminated (voluntarily or involuntarily) as a result of the change.

(e) The following examples illustrate the principles of this A–22:

*Example (1).* A contract between a corporation and A, a disqualified individual, provides that a payment will be made to A if his employment with the corporation is terminated at any time over the succeeding 3 years. Eighteen months later, a change in the ownership of the corporation occurs. Six months after the change in ownership, A's employment is terminated and the payment is made to A. It was not substantially certain, at the time of A's termination, that the payment would have been made had A's employment not been terminated. Termination of employment is considered closely associated with a change in ownership or control. Because the termination occurred within one year after the date of the change in ownership the termination of A's employment is presumed to be materially related to the change in ownership. If this presumption is not rebutted, the payment will be treated as contingent on the change in ownership.

*Example (2).* A contract between a corporation and a disqualified individual provides that a payment will be made to the individual upon the onset of a tender offer for shares of the corporation's stock. A tender offer is made on December 1, 1988, and the payment is made to the disqualified individual. Although the tender offer is unsuccessful, it leads to a negotiated merger with another entity on June 1, 1989, which results in a change in the ownership of the corporation. It was not substantially certain, at the time of the onset of the tender offer, that the payment would have been made had no tender offer taken place. The onset of a tender offer is considered closely associated with a change in ownership or control. Because the tender offer occurred within one year before the date of the change in ownership of the corporation, the onset of the tender offer is presumed to be materially related to the change in ownership. If this presumption is not rebutted, the payment will be treated as contingent on the change in

ownership. If no change in ownership or control had occurred, the payment would not be treated as contingent on a change in ownership or control; however, the payment still could be a parachute payment under Q/A-37 of this section if the contract violated a generally enforced securities law or regulation.

*Example (3).* A contract between a corporation and a disqualified individual provides that a payment will be made to the individual if the corporation's level of product sales or profits reaches a specified level. At the time the contract was entered into, the parties had no reason to believe that such an increase in the corporation's level of product sales or profits would be preliminary or subsequent to, or otherwise closely associated with, a change in ownership or control of the corporation. Eighteen months later, a change in the ownership of the corporation occurs and within one year after the date of the change, the corporation's level of product sales or profits reaches the specified level. Under these facts and circumstances (and in the absence of contradictory evidence), the increase in product sales or profits of the corporation is not an event closely associated with the change in ownership or control of the corporation. Accordingly, even if the increase is materially related to the change, the payment will not be treated as contingent on a change in ownership or control.

Q-23: May a payment be treated as contingent on a change in ownership or control if the payment is made under an agreement entered into after the change?

A-23: (a) No. Payments are not treated as contingent on a change in ownership or control if they are made (or to be made) pursuant to an agreement entered into after the change. For this purpose, an agreement that is executed after a change in ownership or control, pursuant to a legally enforceable agreement that was entered into before the change, will be considered to have been entered into before the change. (See Q/A-9 regarding the exemption for reasonable compensation for services rendered on or after a change in ownership or control.)

(b) The following examples illustrate the principles of this A-23:

*Example (1).* Assume that a disqualified individual is an employee of a corporation. A change in control of the corporation occurs, and thereafter the individual enters into an employment agreement with the acquiring company. Since the agreement is entered into after the change in control occurs, payments to be made under agreement are not treated as contingent on the change.

*Example (2).* Assume the same facts as in example (1), except that the agreement between the disqualified individual and the acquiring company is executed after the change in control, pursuant to a legally enforceable agreement entered into before the change. Payments to be made under the agreement may be treated as contingent on the change in control pursuant to Q/A-22 of this section. However, see Q/A-9 regarding the exemption from the definition of parachute payment for certain amounts of reasonable compensation.

Q-24: If a payment is treated as contingent on a change in ownership or control, is the full amount of the payment so treated?

A-24: (a) Generally, yes. However, in certain circumstances, described in paragraphs (b) and (c) of this A-24, only a portion of the payment is treated as contingent on the change.

(b) This paragraph (b) applies if it is substantially certain, at the time of the change, that the payment would have been made whether or not the change occurred, but the payment is treated as contingent on the change solely because the change accelerates the time at which the payment is made. In such case, the portion of the payment that is treated as contingent on the change in ownership or control is the amount by which the amount of the accelerated payment exceeds the present value of the payment absent the acceleration. If the amount of such a payment absent the acceleration is not reasonably ascertainable, and the acceleration of the payment does not significantly increase the present value of the payment absent the acceleration, the present value of the payment absent the acceleration shall be treated as equal to the amount of the accelerated payment. For rules on determining present value, see paragraph (d) of this A-24, and Q/A-32 and Q/A-33.

(c)(1) This paragraph (c) applies in the case of a payment that is accelerated by a change in ownership or control and that was substantially certain, at the time of the change, to have been made without regard to the change if the disqualified individual had continued to perform services for the corporation for a specified period of time. In such case, the portion of the payment that is treated as contingent on the change in ownership or control is the lesser of

(i) The amount of the accelerated payment; or

(ii) The amount by which the amount of the accelerated payment exceeds the present value of the payment that was expected to be made absent the acceleration (determined without regard to the risk of forfeiture for failure to continue to perform services), plus an amount, as determined in paragraph (c)(2) of this A-24, to reflect the lapse of the obligation to continue to perform services.

If the value of the payment that was expected to be made absent the acceleration is not reasonably ascertainable, the future value of such payment shall be deemed to be equal to the amount of the accelerated payment.

(2) The amount reflecting the lapse of the obligation to continue to perform services (described in paragraph (c)(1)(ii) of this A-24) will depend on all of the facts and circumstances. In no event, however, shall such amount be less than 1 percent of the amount of the accelerated payment multiplied by the number of full months between the date that the individual's right to receive the payment is not subject to any requirement or condition which would be treated as resulting in a substantial risk of forfeiture (within the meaning of § 1.83-3(c)) and the date that, absent the acceleration the individual's right to receive the payment would not have been subject to any requirement or condition which would be treated as resulting in a substantial risk of forfeiture.

(d) For purposes of this A-24, the present value of a payment is determined as of the date on which the accelerated payment is made.

(e) The following examples illustrate the principles of this A-24:

*Example (1).* A corporation and a disqualified individual enter into a contract providing that, if a change in the ownership or control of the corporation occurs, all of the nonforfeitable deferred compensation the individual has earned prior thereto will be paid immediately. The deferred compensation otherwise will be paid when the individual reaches age 60. A change in the ownership of the corporation occurs, and the deferred compensation is immediately paid. Since the payment would have been made in any event when the individual reached age 60, it is substantially certain, at the time of the change, that the payments would have been made whether or not the change occurred. The payment is treated as contingent on the change in ownership or control solely because the change accelerates the time at which the payments are made. Therefore, the portion of the payment treated as contingent on the change is the amount by which the amount of the accelerated payment (*i.e.*, the amount paid to the individual because of the change in ownership or control) exceeds the present value of the payment absent the acceleration (*i.e.*, the value of the deferred compensation at the time of the change in ownership or control, if the compensation had remained nonpayable until age 60).

*Example (2).* A corporation grants a stock appreciation right to a disqualified individual. After the stock appreciation right vests and becomes exercisable, a change in the ownership of the corporation occurs, and the individual exercises the right. Neither the granting nor the vesting of the stock appreciation right was treated as a payment in the nature of compensation. Even if the change in ownership accelerates the time at which the right is exercised, no portion of the payment received upon exercise of the right

is treated as contingent on the change, since the amount of the accelerated payment does not exceed the present value of the payment absent the acceleration.

*Example (3).* As a result of a change in the effective control of a corporation, a disqualified individual with respect to the corporation receives payment of his vested account balance in a nonqualified individual account plan. Actual interest and other earnings on the plan assets are credited to each account as earned and before distribution. Investment of the plan assets is not restricted in such a manner as would prevent the earning of a market rate of return on the plan assets. The date on which the individual would have received his vested account balance absent the change in control is uncertain, and the rate of earnings on the plan assets is not fixed. Thus, the amount of the payment absent the acceleration is not reasonably ascertainable. Under these facts, acceleration of the payment does not significantly increase the present value of the payment absent the acceleration, and the present value of the payment absent the acceleration shall be treated as equal to the amount of the accelerated payment. Accordingly, no portion of the payment is treated as contingent on the change.

*Example (4).* As a result of a change in the effective control of a corporation, a disqualified individual with respect to the corporation receives payment of the individual's vested benefits under a nonqualified pension plan which the individual otherwise would have received upon retirement. The amount of the benefits is not actuarially reduced to reflect its earlier payment. The payment is treated as contingent on the change in control solely because the change accelerates the time at which the payment is made. Therefore, the portion of the payment treated as contingent on the change is the amount by which the amount of the accelerated payment exceeds the present value of the payment absent the acceleration.

*Example (5).* On January 15, 1986, a corporation and a disqualified individual enter into a contract providing for a cash payment of $500,000 to be made to the individual on January 15, 1991. The payment is to be forfeited by the individual if he does not remain employed by the corporation for the entire 5-year period. However, the full amount of the payment is to be made immediately upon a change in the ownership or control of the corporation during the 5-year period. On January 15, 1989, a change in the ownership of the corporation occurs and the full amount of the payment ($500,000) is made on that date to the individual. Since the payment would have been made in the absence of the change if the individual had continued to perform services for the corporation until the end of the five year period, it is substantially certain, at the time of the change, that the payment would have been made in the absence of the change if the individual had continued to perform services for the corporation for a specified period of time. Therefore, only a portion of the payment is treated as contingent on the change. The portion of the payment that is treated as contingent on the change is the amount by which the amount of the accelerated payment (*i.e.*, $500,000, the amount paid to the individual because of the change in ownership) exceeds the present value of the payment that was expected to have been made absent the acceleration (*i.e.*, $406,838, the present value on January 15, 1989, of a $500,000 payment on January 15, 1991), plus an amount reflecting the lapse of the obligation to continue to perform services. Such amount will depend on all the facts and circumstances but in no event will such amount be less than $110,000 (1% × 22 months × $500,000). Accordingly, the minimum amount of the payment treated as contingent on the change in ownership or control is $203,162 ($500,000−$406,838) + $110,000). This result is not changed if the individual actually remains employed until the end of the 5-year period.

*Example (6).* (i) On January 15, 1986, a corporation gives to a disqualified individual, in connection with his performance of services to the corporation, a bonus of 1,000 shares of the corporation's stock. Under the terms of the bonus arrangement, the individual is obligated to return the stock to the corporation if she terminates her employment for any reason prior to January 15, 1991. However, if there is a change in the ownership or effective control of the corporation prior to January 15, 1991, she ceases to be obligated to return the stock. The individual's rights in the stock are treated as substantially nonvested (within the meaning of § 1.83-3 (b)) during that period. On January 15, 1988, a change in the ownership of the corporation occurs. On that day, the fair market value of the stock is $500,000.

(ii) Since the stock would have become substantially vested in the individual in the absence of the change if she had continued to perform services for the corporation through January 15, 1991, it is substantially certain, at the time of the change, that the payment would have been made in the absence of the change if the individual had continued to perform services for the corporation for a specified period of time. Thus, only a portion of the payment is treated as contingent on the change in ownership or control. The portion of the payment that is treated as contingent on the change is the amount by which the present value of the accelerated payment on January 15, 1989 ($500,000), exceeds the present value of the payment that was expected to have been made on January 15, 1991, plus an amount reflecting the lapse of the obligation to continue to perform services. Assuming that, at the time of the change, it cannot be reasonably ascertained what the value of the stock would been on January 15, 1991, the future value of such stock on January 15, 1991, is deemed to be $500,000, the amount of the accelerated payment. The present value on January 15, 1989, of a $500,000 payment to be made on January 15, 1991, is $406,838. Thus, the portion of the payment treated as contingent on the change is $93,162 ($500,000 − $406,838), plus an amount reflecting the lapse of the obligation to continue to perform services. Such amount will depend on all the facts and circumstances but in no event will such amount be less than $110,000 [1%×22 months × $500,000].

*Example (7).* (i) On January 15, 1986, a corporation grants to a disqualified individual nonqualified stock options to purchase 30,000 shares of the corporation's stock. The options do not have a readily ascertainable fair market value at the time of grant. The options will be forfeited by the individual if he fails to perform personal services for the corporation until January 15, 1989. The options will, however, substantially vest in the individual at an earlier date if there is a change in ownership or control of the corporation. On January 16, 1988, a change in the ownership of the corporation occurs and the options become substantially vested in the individual. On January 16, 1988, the options have an ascertainable fair market value of $600,000.

(ii) At the time of the change, it is substantially certain that the payment of the options to purchase 30,000 shares would have been made in the absence of the change if the individual had continued to perform services for the corporation until January 15, 1989. Therefore, only a portion of the payment is treated as contingent on the change. The portion of the payment that is treated as contingent or the change is the amount by which the amount of the accelerated payment on January 16, 1988 ($600,000) exceeds the present value on January 16, 1988, of the payment that was expected to have been made on January 15, 1989, absent the acceleration, plus an amount: reflecting the lapse of the obligation to continue to perform services. Assuming that, at the time of the change, it cannot be reasonably ascertained what the value of the options would have been on January 15, 1989, the value of such options on January 16, 1988, is deemed to be $600,000, the amount of the accelerated payment. The present value on January 16, 1988, of a $600,000 payment to be made on January 15, 1989, is $549,964.13. Thus, the portion of the payment treated as contingent on the change is $50,035.87 ($600,000 − $549,964.13), plus an amount reflecting the lapse of the obligation to continue to perform services. Such amount will depend on all the facts and circumstances but in no event will such amount be less than $60,000 (1% × 10 months × $600,000).

*Example (8).* (i) The facts are the same as in example (7), except that: the options become substantially vested periodically (absent a change in ownership of control), with one-third of the options vesting on January 15, 1987, 1988, and 1989, respectively. Thus, options to purchase 20,000 shares vest independently of the January 16, 1988, change in ownership and the options to purchase the remaining 10,000 shares vest as a result of the change.

(ii) At the time of the change, it is substantially certain that the payment of the options to purchase 10,000 shares would have been made without regard to the change if the individual had continued to perform services for the corporation until January 15, 1989. Therefore, only a portion of the payment is treated as contingent on the change. The portion of the payment that is treated as contingent on the change is the amount by which the amount of the accelerated payment on January 16, 1988

($200,000) exceeds the present value on January 16, 1988, of the payment that was expected to have been made on January 15, 1989, absent the acceleration, plus an amount reflecting the lapse of the obligation to perform services. Assuming that, at the time of the change, it cannot be reasonably ascertained what the value of the options would have been on January 15, 1989, the value of such options on January 16, 1988, is deemed to be $200,000, the amount of the accelerated payment. The present value on January 16, 1988, of a $200,000 payment to be made on January 15, 1989, is $183,328.38. Thus, the portion of the payment treated as contingent on the change is $16,671.62 ($200,000 − $183,328.38), plus an amount reflecting the lapse of the obligation to continue to perform services. Such amount will depend on all the facts and circumstances but in no event will such amount be less than $20,000 (1% × 10 months × $200,000).

*Example (9).* Assume the same facts as in example (7), except that the option agreement provides that the options will vest either upon the corporation's level of profits reaching a specified level, or if earlier, on the date on which there is a change in ownership or control of the corporation. The corporation's level of profits do not reach the specified level prior to January 16, 1988. In such case, the full amount of the payment, $600,000, is treated as contingent on the change because it was not substantially certain, at the time of the change, that the payment would have been made in the absence of the change if the individual had continued to perform services for the corporation for a specified period of time. See Q/A–39 for rules relating to the reduction of the excess parachute payment by the portion of the payment which is established to be reasonable compensation for personal services actually rendered before the date of a change in ownership or control.

*Presumption That Payment Is Contingent on Change*

Q–25: Is there a presumption that certain payments are contingent on a change in ownership or control?

A–25: Yes. For purposes of this section, any payment pursuant to—

(a) An agreement entered into within one year before the date of a change in ownership or control, or

(b) An amendment that modifies a previous agreement in any significant respect, if the amendment is made within one year before the date of a change in ownership or control, is presumed to be contingent on such change unless the contrary is established by clear and convincing evidence. In the case of an amendment described in paragraph (b) of this A–25, only the portion of any payment that exceeds the amount of such payment that would have been made in the absence of the amendment is presumed, by reason of the amendment, to be contingent on the change in ownership or control.

Q–26: How may the presumption described in Q/A–25 of this section be rebutted?

A–26: (a) To rebut the presumption described in Q/A–25 of this section, the taxpayer must establish by clear and convincing evidence that the payment is not contingent on the change in ownership or control. Whether the payment is contingent on such change is determined on the basis of all the facts and circumstances of the particular case. Factors relevant to such a determination include, but are not limited to: (1) The content of the agreement or amendment; and (2) the circumstances surrounding the execution of the agreement or amendment, such as whether it was entered into at a time when a takeover attempt had commenced and the degree of likelihood that a change in ownership or control would actually occur.

(b) In the case of an agreement described in paragraph (a) of A–25 of this section, clear and convincing evidence that the agreement is one of the three following types will generally rebut the presumption that payments under the agreement are contingent on the change in ownership or control:

(1) A "nondiscriminatory employee plan or program" as defined in paragraph (c) of this A–26;

(2) A contract between a corporation and an individual that replaces a prior contract entered into by the same parties more than one year before the change in ownership or control, if the new contract does not provide for increased payments (apart from normal increases attributable to increased responsibilities or cost of living adjustments), accelerate the payment of amounts due at a future time, or modify (to the individual's benefit) the terms or conditions under which payments will be made; or

(3) A contract between a corporation and an individual who did not perform services for the corporation prior to the individual's taxable year in which the change in ownership or control occurs, if the contract does not provide for payments that are significantly different in amount, timing, terms, or conditions from those provided under contracts entered into by the corporation (other than contracts that themselves were entered into within one year before the change in ownership or control and in contemplation of the change) with individuals performing comparable services.

However, even if the presumption is rebutted with respect to an agreement, payments under the agreement still may be contingent on the change in ownership or control pursuant to Q/A–22 of this section.

(c) For purposes of this section, the term "nondiscriminatory employee plan or program" means: a group term life insurance plan that meets the requirements of section 79(d); an employee benefit plan that meets the requirements of section 89 (d) and (e); a self insured medical reimbursement plan that meets the requirements of section 105(h); a qualified group legal services plan (within the meaning of section 120); a cafeteria plan (within the meaning of section 125); an educational assistance program (within the meaning of section 127); and a dependent care assistance program (within the meaning of section 129). Payments under certain other plans are exempt from the definition of "parachute payment" under Q/A–8 of this section.

(d) The following examples illustrate the application of the presumption:

*Example (1).* A corporation and a disqualified individual who is an employee of the corporation enter into an employment contract. The contract replaces a prior contract entered into by the same parties more than one year before the change and the new contract does not provide for any increased payments other than a cost of living adjustment, does not accelerate the payment of amounts due at a future time, and does not modify (to the individual's benefit) the terms or conditions under which payments will be made. Clear and convincing evidence of these facts rebuts the presumption described in A–25 of this section. However, payments under the contract still may be contingent on the change in ownership or control pursuant to Q/A–22 of this section.

*Example (2).* Assume the same facts as in example (1), except that the contract is entered into after a tender offer for the corporation's stock had commenced and it was likely that a change in ownership would occur and the contract provides for a substantial bonus payment to the individual upon his signing the contract. The individual has performed services for the corporation for many years, but previous employment contracts between the corporation and the individual did not provide for a similar signing bonus. One month after the contract is entered into, a change in the ownership of the corporation occurs. All payments under the contract are presumed to be contingent on the change in ownership even though the bonus payment would have been legally required even if no change had occurred. Clear and convincing evidence of these facts rebuts the presumption described in A–25 of this section with respect to all of the payments under the contract with the exception of the bonus payment (which is treated as contingent on the change). However, such payments under the contract still may be contingent on the change in

ownership or control pursuant to Q/A-22 of this section.

*Change in Ownership or Control*

Q-27: When does a change in the ownership of a corporation occur?

A-27: (a) For purposes of this section, a change in the ownership or control of a corporation occurs on the date that any one person, or more than one person acting as a group, acquires ownership of stock of the corporation that, together with stock held by such person or group, possesses more than 50 percent of the total fair market value or total voting power of the stock of such corporation. However, if any one person, or more than one person acting as a group, is considered to own more than 50 percent of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a change in the ownership of the corporation (or to cause a change in the effective control of the corporation (within the meaning of Q/A-28 of this section)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock for purposes of this section.

(b) For purposes of paragraph (a) of this A-27, persons will not be considered to be "acting as a group" merely because they happen to purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be "acting as a group" if they are owners of an entity that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the corporation.

(c) For purposes of this A-27, section 318(a) shall apply in determining stock ownership.

(d) The following examples illustrate the principles of this A-27:

*Example (1).* Corporation M has owned stock having a fair market value equal to 19 percent of the value of the stock of Corporation N (an otherwise unrelated corporation) for many years prior to 1986. Corporation M acquires additional stock having a fair market value equal to 15 percent of the value of the stock of Corporation N on January 1, 1986, and an additional 18 percent on February 21, 1987. As of February 21, 1987, Corporation M has acquired stock having a fair market value greater than 50 percent of the value of the stock of Corporation N. Thus, a change in the ownership of Corporation N is considered to occur on February 21, 1987 (assuming that Corporation M did not have effective control of Corporation N immediately prior to the acquisition on that date).

*Example (2).* All of the corporation's stock is owned by the founders of the corporation. The board of directors of the corporation decides to offer shares of the corporation to the public. After the public offering, the founders of the corporation own a total of 40 percent of the corporation's stock, and members of the public own 60 percent. If no one person (or more than one person acting as a group) owns more than 50 percent of the corporation's stock (by value or voting power) after the public offering, there is no change in the ownership of the corporation.

*Example (3).* Corporation P merges into Corporation O (a previously unrelated corporation). In the merger, the shareholders of Corporation P receive Corporation O stock in exchange for their Corporation P stock. Immediately after the merger, the former shareholders of Corporation P own stock having a fair market value equal to 60 percent of the value of the stock of Corporation O, and the former shareholders of Corporation O own stock having a fair market value equal to 40 percent of the value of the stock of Corporation O. The former shareholders of Corporation P will be treated as "acting as a group" in their acquisition of Corporation O stock. Thus, a change in the ownership of Corporation O occurs on the date of the merger.

*Example (4).* A, an individual, owns stock having a fair market value equal to 20 percent of the value of the stock of Corporation Q. On January 1, 1987, Corporation Q acquires in a redemption for cash all of the stock held by shareholders other than A. Thus, A is left as the sole shareholder of Corporation O. A change in ownership of Corporation O is considered to occur on January 1, 1987 (assuming that A did not have effective control of Corporation Q immediately prior to the redemption).

*Example (5).* Assume the same facts as in example (4), except that A owns stock having a fair market value equal to 51 percent of the value of all the stock of Corporation Q immediately prior to the redemption. There is no change in the ownership of Corporation Q as a result of the redemption.

Q-28: When does a change in the effective control of a corporation occur?

A-28: (a) For purposes of this section, a change in the effective control of a corporation is presumed to occur on the date that either—

(1) Any one person, or more than one person acting as a group, acquires (or has acquired during the 12 month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 20 percent or more of the total voting power of the stock of such corporation; or

(2) A majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors prior to the date of the appointment or election.

This presumption may be rebutted by establishing that such acquisition or acquisitions of the corporation's stock, or such replacement of the majority of the members of the corporation's board of directors, does not transfer the power to control (directly or indirectly) the management and policies of the corporation from any one person (or more than one person acting as a group) to another person (or group). For purposes of this section, in the absence of an event described in paragraph (a)(1) or (2) of this A-28, a change in the effective control of a corporation is presumed not to have occurred.

(b) If any one person, or more than one person acting as a group, is considered to effectively control a corporation (within the meaning of this A-28), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation (or to cause a change in the ownership of the corporation within the meaning of Q/A-27 of this section).

(c) For purposes of this A-28, persons will not be considered to be "acting as a group" merely because they happen to purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered as "acting as a group" if they are owners of an entity that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the corporation.

(d) Section 318(a) shall apply in determining stock ownership for purposes of this A-28.

(e) The following examples illustrate the principles of this A-28:

*Example (1).* Shareholder A acquired the following percentages of the voting stock of Corporation M (an otherwise unrelated corporation) on the following dates: 16 percent on January 1, 1985; 10 percent on January 10, 1986; 8 percent on February 10, 1986; 11 percent on March 1, 1987; and 8 percent on March 10, 1987. Thus, on March 10, 1987, A owns a total of 53 percent of M's voting stock. Since A did not acquire 20 percent or more of M's voting stock during any 12-month period, there is no presumption of a change in effective control pursuant to paragraph (a)(1) of this A-28. In addition, under these facts there is a presumption that no change in the effective control of Corporation M occurred. If this presumption is not rebutted (and thus no change in effective control of Corporation M is treated as occurring prior to March 10, 1987), a change in the ownership of Corporation M will be treated as having occurred on March

10, 1987 (pursuant to Q/A-27 of this section) since A had acquired more than 50 percent of Corporation M's voting stock as of that date.

*Example (2).* A minority group of shareholders of a corporation opposes the practices and policies of the corporation's current board of directors. A proxy contest ensues. The minority group presents its own slate of candidates for the board at the next annual meeting of the corporation's shareholders, and candidates of the minority group are elected to replace a majority of the current members of the board. A change in the effective control of the corporation is presumed to have occurred on the date the election of the new board of directors becomes effective.

Q-29: When does a change in the ownership of a substantial portion of a corporation's assets occur?

A-29: (a) For purposes of this section, a change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total fair market value equal to or more than one third of the total fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions.

(b) A transfer of assets by a corporation is not treated as a change in the ownership of such assets if the assets are transferred to:

(1) A shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock,

(2) An entity, 50 percent or more of the total value or voting power of which is owned, directly or indirectly, by the corporation,

(3) A person, or more than one person acting as a group, that owns, directly or indirectly, 50 percent or more of the total value or voting power of all the outstanding stock of the corporation, or

(4) An entity, at least 50 percent of the total value or voting power is owned, directly or indirectly, by a person described in paragraph (b)(3) of this A-29.

For purposes of this paragraph (b) and except as otherwise provided, a person's status is determined immediately after the transfer of the assets. For example, a transfer of assets pursuant to a complete liquidation of a corporation, a redemption of a shareholder's interest, or a transfer to a majority-owned subsidiary of the corporation is not treated as a change in the ownership of the assets of the transferor corporation.

(c) For purposes of this A-29, section 318(a) shall apply in determining stock ownership.

(d) The following examples illustrate the principles of this A-29:

*Example (1).* Corporation M acquires assets having a fair market value of $500,000 from Corporation N (an unrelated corporation) on January 1, 1986. The total fair market value of Corporation N's assets immediately prior to the acquisition was $3 million. Since the value of the assets acquired by Corporation M is less than one-third of the fair market value of Corporation N's total assets immediately prior to the acquisition, the acquisition does not represent a change in the ownership of a substantial portion of Corporation N's assets.

*Example (2).* Assume the same facts as in example (1). Also assume that on November 1, 1986, Corporation M acquires from Corporation N additional assets having a fair market value of $700,000. Thus, Corporation M has acquired from Corporation N assets worth a total of $1.2 million during the 12-month period ending on November 1, 1986. Since $1.2 million is more than one-third of the total fair market value of all of Corporation N's assets immediately prior to the earlier of these acquisitions ($3 million), a change in the ownership of a substantial portion of Corporation N's assets is considered to have occurred on November 1, 1986.

*Example (3).* All of the assets of Corporation P are transferred to Corporation O (an unrelated corporation). In exchange, the shareholders of Corporation P receive Corporation O stock. Immediately after the transfer, the former shareholders of Corporation P own 60 percent of the fair market value of the outstanding stock of Corporation O and the former shareholders of Corporation O own 40 percent of the fair market value of the outstanding stock of Corporation O. Because Corporation O is an entity more than 50 percent of the fair market value of the outstanding stock of which is owned by the former shareholders of Corporation P, the transfer of assets is not treated as a change in ownership of a substantial portion of the assets of Corporation P.

*"Three-Times-Base-Amount Test" for Parachute Payments*

Q-30: Are all payments that are in the nature of compensation, are made to a disqualified individual, and are contingent on a change in ownership or control, parachute payments?

A-30: (a) No. To determine whether such payments are parachute payments, they must be tested against the individual's "base amount" (as defined in Q/A-34 of this section). To do this, the aggregate present value of all payments in the nature of compensation that are made or to be made to (or for the benefit of) the same disqualified individual and are contingent on the change in ownership or control must be determined. If this aggregate present value equals or exceeds the amount equal to 3 times the individual's base amount, the payments are parachute payments. If this aggregate present value is less than the amount equal to 3 times the individual's base amount, no portion of the payments is a parachute payment. See Q/A-31, Q/A-32, and Q/A-33 for rules on determining present value. Parachute payments that are securities violation parachute payments are not included in the foregoing computation if they are not contingent on a change in ownership or control. See Q/A-37 for the definition and treatment of securities violation parachute payments.

(b) The following examples illustrate the principles of this A-30:

*Example (1).* A is a disqualified individual with respect to Corporation M. A's base amount is $100,000. Payments totalling $400,000 that are in the nature of compensation and contingent on a change in the ownership of Corporation M are made to A on the date of the change. The payments are parachute payments since they have an aggregate present value at least equal to 3 times A's base amount of $100,000 (3 × $100,000 = $300,000).

*Example (2).* Assume the same facts as in example (1), except that the payments contingent on the change in the ownership of Corporation M total $290,000. Since the payments do not have an aggregate present value at least equal to 3 times A's base amount, no portion of the payments is a parachute payment.

Q-31: As of what date is the present value of a payment determined?

A-31: Except as provided in this section, the present value of a payment is determined as of the date on which the change in ownership or control occurs, or, if a payment is made prior to such date, the date on which the payment is made.

Q-32: What discount rate is to be used to determine present value?

A-32: For purposes of this section, present value generally is determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) and the regulations thereunder) compounded semiannually. The applicable Federal rate to be used for this purpose is the Federal rate that is in effect on the date as of which the present value is determined. See Q/As 24 and 35. However, for any payment, the corporation and the disqualified individual may elect to use the applicable Federal rate that is in effect on the date that the contract which provides for the payment is entered into, if such election is made in the contract.

Q-33: If the present value of a payment to be made in the future is

contingent on an uncertain future event or condition, how is the present value of the payment determined?

A–33: (a) In certain cases, it may be necessary to apply the 3-times-base-amount test of Q/A–30 of this section or to allocate a portion of the base amount to a payment described in paragraph (a)(1), (2), and (3) of A–2 of this section at a time when the aggregate present value of all such payments cannot be determined with certainty because the time, amount, or right to receive one or more such payments is contingent on the occurrence of an uncertain future event or condition. For example, a disqualified individual's right to receive a payment may be contingent on the involuntary termination of such individual's employment with the corporation. In such a case, a reasonable estimate of the time and amount of the future payment shall be made, and the present value of the payment will be determined on the basis of this estimate. For purposes of making this estimate, an uncertain future event or condition that may reduce the present value of a payment will be taken into account only if the possibility of the occurrence of the event or condition can be determined on the basis of generally accepted actuarial principles or can be otherwise estimated with reasonable accuracy.

(b) Whenever a payment described in paragraph (a) of this A–33 is actually made or becomes certain not to be made, the 3-times-base-amount test described in Q/A–30 of this section shall be reapplied (and the portion of the base amount allocated to previous payments shall be reallocated (if necessary) to such payments) to reflect the actual time and amount of the payment. Whenever the 3-times-base-amount test is applied (or whenever the base amount is allocated), the aggregate present value of the payments received or to be received by the disqualified individual is redetermined as of the date described in A–31 of this section, using the discount rate described in A–32 of this section. This redetermination may affect the amount of any excess parachute payment for a prior taxable year.

(c) The following examples illustrate the principles of this A–33:

*Example (1).* A, a disqualified individual with respect to Corporation M, has a base amount of $100,000. Under his employment agreement with Corporation M, A is entitled to receive a payment in the nature of compensation in the amount of $250,000 contingent on a change in the ownership of Corporation M. In addition, the agreement provides that if A's employment is terminated within 1 year after the change in ownership, A will receive an additional payment in the nature of compensation in the amount of $150,000, payable 1 year after the date of the change in ownership. A and Corporation M are calendar year taxpayers. A change in the ownership of Corporation M occurs and A receives the first payment of $250,000. At the time Corporation M files its income tax return for the year of the change in ownership, it reasonably estimates that there is a 50-percent probability that, as a result of the change, A's employment will be terminated within 1 year of the date of the change. For purposes of applying the 3-times-base-amount test (and if the first payment is determined to be a parachute payment, for purposes of allocating a portion of A's base amount to that payment), Corporation M shall assume that an additional payment of $75,000 (.5 × $150,000) will be made to A as a result of the change in ownership. The present value of the additional payment is determined under Q/A–31 and Q/A–32 of this section.

*Example (2).* B, a disqualified individual with respect to Corporation N, has a base amount of $100,000. Under her employment agreement with Corporation N, B is entitled to receive payments in the nature of compensation in the amount of $20,000 per month for a period of 24 months if B terminates employment with Corporation N as a result of a change in ownership of Corporation N. Such monthly payments are to be reduced by the amount of any compensation earned by B from unrelated employers during the 24-month period. B and Corporation N are calendar year taxpayers. On June 1, 1988, there is a change in the ownership of Corporation N. As a result of the change, B voluntarily terminates employment with Corporation N and begins to receive monthly payments under the agreement. Assume that the present value, determined as of June 1, 1988, of a stream of 24-monthly payments of $20,000, is $438,134. At the time Corporation N files its income tax return for 1988, it cannot be determined with reasonable accuracy whether B will earn any compensation from unrelated employers during the 24-month period. Accordingly, the present value of the payments to be received by B ($438,134) exceeds 3 times B's base amount ($300,000) and a portion of each of the 1988 payments will be treated as an excess parachute payment for the 1988 taxable year.

*Example (3).* Assume the same facts as in example (2), except that in April 1989 B becomes employed by an employer unrelated to Corporation N. At the time Corporation N files its income tax return for 1989, it has become certain that, due to the compensation earned by B from unrelated employers, the present value, determined as of June 1, 1988, of the stream of payments from Corporation N will not exceed $192,060. Because it has been redetermined that the present value of the payments received or to be received by B does not equal or exceed 3 times B's base amount, no portion of the payments made in 1988 or 1989 will be treated as excess parachute payments.

Q–34: What is the "base amount"?

A–34: (a) The base amount of a disqualified individual is the average annual compensation (as defined in Q/A–21 of this section) which was includable in the gross income of such individual for taxable years in the "base period" (or either was excludable from such gross income as "foreign earned income" within the meaning of section 911, or would have been includable in such gross income if such person had been a United States citizen or resident.) See Q/A–35 for the definition of "base period" and for examples of base amount computations.

(b) If the base period of a disqualified individual includes a short taxable year or less than all of a taxable year, compensation for such short or incomplete taxable year must be annualized before determining the average annual compensation for the base period. In annualizing compensation, the frequency with which payments are expected to be made over an annual period must be taken into account. Thus, any amount of compensation for such a short or incomplete taxable year that represents a payment that will not be made more often than once per year is not annualized.

(c) Because the base amount includes only compensation that is includable in gross income, the base amount does not include certain items that constitute parachute payments. For example, payments in the form of untaxed fringe benefits are not included in the base amount but may be treated as parachute payments.

Q–35: What is the "base period"?

A–35: (a) The "base period" of a disqualified individual is the most recent 5 taxable years of the individual ending before the date of the change in ownership or control. However, if the disqualified individual was not an employee or independent contractor of the corporation with respect to which the change in ownership or control occurs (or a predecessor entity or a related entity as defined in A–21 of this section) for this entire 5-year period, the individual's base period is the portion of such 5-year period during which the individual performed personal services for the corporation or predecessor entity or related entity.

(b) The following examples illustrate the principles of Q/A–34 of this section and this Q/A–35:

*Example (1).* A disqualified individual was employed by a corporation for 2 years and 4 months preceding his taxable year in which a change in ownership or control of the corporation occurs. The individual's includible compensation income from the corporation was $30,000 for the 4-month period, $120,000 for the first full year, and

$150,000 for the second full year. The individual's base amount is $120,000 [(3 × $30,000) + $120,000 + $150,000] ÷ 3.

*Example (2).* Assume the same facts as in example (1), except that the individual also received a $60,000 "sign-up" bonus when his employment with the corporation commenced at the beginning of the 4-month period. The individual's base amount is $140,000 [($60,000 + (3 × $30,000)] + $120,000 + $150,000] ÷ 3.

Since the bonus will not be paid more often than once per year, the amount of the bonus is not increased in annualizing the individual's compensation for the 4-month period.

Q–36: How is the base amount determined in the case of a disqualified individual who did not perform services for the corporation (or a predecessor entity or a related entity as defined in A–21 of this section), prior to the individual's taxable year in which the change in ownership or control occurs?

A–36: (a) In such a case, the individual's base amount is the annualized compensation (as defined in Q/A–21 of this section) which—

(1) Was includible in the individual's gross income for that portion, prior to such change, of the individual's taxable year in which the change occurred (or either was excludible from such gross income as "foreign earned income" within the meaning of section 911, or would have includible in such gross income if such person had been a United States citizen or resident),

(2) Was not contingent on the change in ownership or control, and

(3) Was not a securities violation parachute payment.

(b) The following examples illustrate the principles of this A–36:

*Example (1).* On January 1, 1986, A, an individual whose taxable year is the calendar year, enters into a 4-year employment contract with Corporation M as an officer of the corporation. A has not previously performed services for Corporation M (or any predecessor entity or related entity as defined in A–21 of this section). Under the employment contract, A is to receive an annual salary of $120,000 for each of the 4 years that he remains employed by Corporation M with any remaining unpaid balance to be paid immediately in the event that A's employment is terminated without cause. On July 1, 1986, after A has received compensation of $60,000, a change in the ownership of Corporation M occurs. Because of the change, A's employment is terminated without cause, and he receives a payment of $420,000. It is established by clear and convincing evidence that the $60,000 in compensation is not contingent on the change in ownership or control, but the presumption of Q/A–25 of this section is not rebutted with respect to the $420,000 payment. Thus, the payment of $420,000 is treated as contingent on the change in ownership of Corporation M. In this case, A's base amount is $120,000 (2 × $60,000). Since the present value of the payment which is contingent on the change in ownership of Corporation M ($420,000) is more than 3 times A's base amount of $120,000 (3 × $120,000 = $360,000), the payment is a parachute payment.

*Example (2).* Assume the same facts as in example (1), except that A also receives a "sign-up" bonus of $50,000 from Corporation M on January 1, 1986. It is established by clear and convincing evidence that the bonus is not contingent on the change in ownership. When the change in ownership occurs on July 1, 1986, A has received compensation of $110,000 (the $50,000 bonus plus $60,000 in salary). In this case, A's base amount is $170,000 [$50,000 + (2 × $60,000)]. Since the $50,000 bonus will not be paid more than once per year, the amount of the bonus is not increased in annualizing A's compensation. The present value of the potential parachute payment ($420,000) is less than 3 times A's base amount of $170,000 (3 × $170,000 = $510,000), and therefore no portion of the payment is a parachute payment.

*Securities Violation Parachute Payments*

Q–37: Must a payment be contingent on a change in ownership or control in order to be a parachute payment?

A–37: (a) No. The term "parachute payment" also includes any payment (other than a payment exempted under Q/A–6 or Q/A–8 of this section) that is in the nature of compensation and is to (or for the benefit of) a disqualified individual, if such payment is made or to be made—

(1) Pursuant to an agreement that violates any generally enforced Federal or State securities laws or regulations, and

(2) In connection with a potential or actual change in ownership or control.

A violation is not taken into account under paragraph (a)(1) of this A–37 if it is merely technical in character or is not materially prejudicial to shareholders or potential shareholders. Moreover, a violation will be presumed not to exist unless the existence of the violation has been determined or admitted in a civil or criminal action (or an administrative action by a regulatory body charged with enforcing the particular securities law or regulation) which has been resolved by adjudication or consent. Parachute payments described in this A–37 are referred to in this section as "securities violation parachute payments."

(b) Securities violation parachute payments that are not contingent on a change in ownership or control within the meaning of Q/A–22 of this section are not taken into account in applying the 3-times-base-amount test of Q/A–30 of this section. Such payments are considered parachute payments regardless of whether such test is met with respect to the disqualified individual. Moreover, the amount of a securities violation parachute payment treated as an excess parachute payment shall not be reduced by the portion of such payment that is reasonable compensation for personal services actually rendered before the date of a change in ownership or control if such payment is not contingent on such change. Likewise, the amount of a securities violation parachute payment shall include the portion of such payment that is reasonable compensation for personal services to be rendered on or after the date of a change in ownership or control if such payment is not contingent on such change.

(c) The rules in paragraph (b) of this A–37 also apply to securities violation parachute payments that are contingent on a change in ownership or control if the application of these rules results in greater total excess parachute payments with respect to the disqualified individual than would result if the payments were treated simply as payments contingent on a change in ownership or control (and hence were taken into account in applying the 3-times-base-amount test and were reduced by, or did not include, any applicable amount of reasonable compensation).

(d) The following examples illustrate the principles of this A–37:

*Example (1).* A, a disqualified individual with respect to Corporation M, receives two payments in the nature of compensation that are contingent on a change in the ownership or control of Corporation M. The present value of the first payment is equal to A's base amount and is not a securities violation parachute payment. The present value of the second payment is equal to 1.5 times A's base amount and is a securities violation parachute payment. Neither payment includes any reasonable compensation. If the second payment is treated simply as a payment contingent on a change in ownership or control, the amount of A's total excess parachute payments is zero because the aggregate present value of the payments does not equal or exceed 3 times A's base amount. If the second payment is treated as a securities violation parachute payment subject to the rules of paragraph (b) of this A–37, the amount of A's total excess parachute payments is 0.5 times A's base amount. Thus, the second payment is treated as a securities violation parachute payment.

*Example (2).* Assume the same facts as in example (1), except that the present value of the first payment is equal to 2 times A's base amount. If the second payment is treated simply as a payment contingent on a change in ownership or control, the total present value of the payments is 3.5 times A's base amount, and the amount of A's total excess parachute payments is 2.5 times A's base

amount. If the second payment is treated as a securities violation parachute payment, the amount of A's total excess parachute payments is 0.5 times A's base amount. Thus, the second payment is treated simply as a payment contingent on a change in ownership or control.

*Example (3).* B, a disqualified individual with respect to Corporation N, receives two payments in the nature of compensation that are contingent on a change in the control of Corporation N. The present value of the first payment is equal to 4 times B's base amount and is a securities violation parachute payment. The present value of the second payment is equal to 2 times B's base amount and is not a securities violation parachute payment. B establishes by clear and convincing evidence that the entire amount of the first payment is reasonable compensation for personal services to be rendered after the change in control. If the first payment is treated simply as a payment contingent on a change in ownership or control, it is exempt from the definition of "parachute payment" pursuant to Q/A–9 of this section. Thus, the amount of B's total excess parachute payment is zero because the present value of the second payment does not equal or exceed three times B's base amount. However, if the first payment is treated as a securities violation parachute payment, the amount of B's total excess parachute payments is 3 times B's base amount. Thus, the first payment is treated as a securities violation parachute payment.

*Example (4).* Assume the same facts as in example (3), except that B does not receive the second payment and B establishes by clear and convincing evidence that the first payment is reasonable compensation for services actually rendered before the change in the control of Corporation N. If the payment is treated simply as a payment contingent on a change in ownership or control, the amount of B's excess parachute payment is zero because the amount treated as an excess parachute payment is reduced by the amount that B establishes as reasonable compensation. However, if the payment is treated as a securities violation parachute payment, the amount of B's excess parachute payment is 3 times B's base amount. Thus, the payment is treated as a securities violation parachute payment.

*Computation and Reduction of Excess Parachute Payments*

Q–38: How is the amount of an excess parachute payment computed?

A–38: (a) The amount of an excess parachute payment is the excess of the amount of any parachute payment over the portion of the disqualified individual's base amount that is allocated to such payment. For this purpose, the portion of the base amount allocated to any parachute payment is the amount that bears the same ratio to the base amount as the present value of such parachute payment bears to the aggregate present value of all parachute payments made or to be made to (or for the benefit of) the same disqualified individual. Thus, the portion of the base amount allocated to any parachute payment is determined by multiplying the base amount by a fraction, the numerator of which is the present value of such parachute payment and the denominator of which is the aggregate present value of all such payments. See Q/A–31, Q/A–32, and Q/A–33 for rules on determining present value and Q/A–34 for the definition of "base amount".

(b) *Example.* An individual with a base amount of $100,000 is entitled to receive two parachute payments, one of $200,000 and the other of $400,000. The $200,000 payment is made at the time of the change in ownership or control, and the $400,000 payment is to be made at a future date. The present value of the $400,000 payment is $300,000 on the date of the change in ownership or control. The portions of the base amount allocated to these payments are $40,000 (($200,000/$500,000) × $100,000) and $60,000 (($300,000/$500,000) × $100,000), respectively. Thus, the amount of the first excess parachute payment is $160,000 ($200,000−$40,000) and that of the second is $340,000 ($400,000−$60,000).

Q–39: May the amount of an excess parachute payment be reduced by reasonable compensation for personal services actually rendered before the change in ownership or control?

A–39: (a) Generally, yes. Except in the case of payments treated as securities violation parachute payments, the amount of an excess parachute payment is reduced by any portion of the payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Services reasonably compensated for by payments that are not parachute payments (either because the payments are not contingent on a change in ownership or control and are not securities violation parachute payments, or because the payments are made pursuant to a contract entered into before June 15, 1984, which has not been renewed, or amended or supplemented in significant relevant respect after June 14, 1984) are not taken into account for this purpose. The portion of any parachute payment that is established as reasonable compensation is first reduced by the portion of the disqualified individual's base amount that is allocated to such parachute payment; any remaining portion of the parachute payment established as reasonable compensation then reduces the excess parachute payment.

(b) Reasonable compensation for personal services to be rendered by the disqualified individual on or after the date of the change in ownership or control is exempt from the definition of "parachute payment" pursuant to Q/A–9 of this section. For rules on determining amounts of reasonable compensation, see Q/A–40 through Q/A–43.

(c) The following examples illustrate the principles of this A–39:

*Example (1).* Assume that a parachute payment of $600,000 is made to a disqualified individual, and the portion of the individual's base amount that is allocated to the parachute payment is $100,000. Also assume that $300,000 of the $600,000 parachute payment is established as reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Before the reasonable compensation is taken into account, the amount of the excess parachute payment is $500,000 ($600,000−$100,000). In reducing the excess parachute payment by reasonable compensation, the portion of the parachute payment that is established as reasonable compensation ($300,000) is first reduced by the portion of the disqualified individual's base amount that is allocated to the parachute payment ($100,000), and the remainder ($200,000) then reduces the excess parachute payment. Thus, in this case, the excess parachute payment of $500,000 is reduced by $200,000 of reasonable compensation.

*Example (2).* Assume the same facts as in example (1), except that the full amount of the $600,000 parachute payment is established as reasonable compensation. In this case, the excess parachute payment of $500,000 is reduced to zero by $500,000 of reasonable compensation. As a result, no portion of any deduction for the payment is disallowed by section 280G, and no portion of the payment is subject to the 20-percent excise tax of section 4999.

*Determination of Reasonable Compensation*

Q–40: How is it determined whether payments are reasonable compensation?

A–40: In general, whether payments are reasonable compensation for personal services actually rendered, or to be rendered, by the disqualified individual is determined on the basis of all the facts and circumstances of the particular case. Factors relevant to such a determination include, but are not limited to, the following:

(a) The nature of the services rendered or to be rendered;

(b) The individual's historic compensation for performing such services; and

(c) The compensation of individuals performing comparable services in situations where the compensation is not contingent on a change in ownership or control.

Q–41: Is any particular type of evidence generally considered clear and

convincing evidence of reasonable compensation for personal services?

A–41: Yes. A showing that payments are made under a nondiscriminatory employee plan or program (as defined in Q/A–26 of this section) generally is considered to be clear and convincing evidence that the payments are reasonable compensation. This is true whether the personal services for which the payments are made are actually rendered before, or to be rendered on or after, the date of the change in ownership or control. Q/A–46 of this section (relating to the treatment of an affiliated group as one corporation) does not apply for purposes of this A–41. No determination of reasonable compensation is needed in order for payments under qualified plans to be exempt from the definition of "parachute payment" under Q/A–8 of this section.

Q–42: Is any particular type of evidence generally considered clear and convincing evidence of reasonable compensation for personal services to be rendered on or after the date of a change in ownership or control?

A–42: (a) Yes. If payments are made or to be made to (or on behalf of) a disqualified individual for personal services to be rendered on or after the date of a change in ownership or control, a showing that

(1) The payments were made or are to be made only for the period the individual actually performs such personal services, and

(2) The individual's annual compensation for such services is not significantly greater than such individual's annual compensation prior to the change in ownership or control, apart from normal increase attributable to increased responsibilities or cost of living adjustments (or is not significantly greater than the annual compensation customarily paid by the employer or by comparable employers to persons performing comparable services), generally is considered to be clear and convincing evidence that the payments are reasonable compensation for services to be rendered on or after the date of change in ownership or control. However, except as provided in paragraph (b) of this A–42, such clear and convincing evidence will not exist if the individual does not, in fact, perform the services.

(b) If the employment of a disqualified individual is involuntarily terminated before the end of a contract term and the individual is paid damages for the breach of the contract, a showing of the following factors generally is considered clear and convincing evidence that the payment is reasonable compensation for personal services to be rendered on or after the date of change in ownership or control:

(1) The contract was not entered into, amended, or renewed in contemplation of the change in ownership or control;

(2) The compensation the individual would have received under the contract would qualify as reasonable compensation under section 162;

(3) The damages do not exceed the present value (determined as of the date of receipt) of the compensation the individual would have received under the contract if the individual had continued to perform services for the employer until the end of the contract term;

(4) The damages are received because an offer to provide personal services was made by the disqualified individual but was rejected by the employer; and

(5) The damages are reduced by mitigation.

Mitigation will be treated as occurring when such damages are reduced (or any payment of such damages is returned) to the extent of the disqualified individual's earned income (within the meaning of section 911(d)(2)(A)) during the remainder of the period in which the contract would have been in effect. See Q/A–44 for rules regarding damages for a failure to make severance payments.

(c) The following examples illustrate the principles of this A–42:

*Example (1).* A, a disqualified individual, has a three-year employment contract with Corporation M, a publicly traded corporation. Under this contract, A is to receive a salary for $100,000 for the first year of the contract and, for each succeeding year, an annual salary that is 10 percent higher than his prior year's salary. During the third year of the contract, Corporation N acquires all the stock of Corporation M. Prior to the change in ownership, Corporation N arranges to retain A's services by entering into an employment contract with him that is essentially the same as A's contract with Corporation M. Under the new contract, Corporation N is to fulfill Corporation M's obligations for the third year of the old contract, and, for each of the succeeding years, pay A an annual salary that is 10 percent higher than his prior year's salary. Amounts are payable under the new contract only for the portion of the contract term during which A remains employed by Corporation N. A showing of the facts described above (and in the absence of contradictory evidence) is regarded as clear and convincing evidence that all payments under the new contract are reasonable compensation for personal services to be rendered on or after the date of the change in ownership. Therefore, the payments under this agreement are exempt from the definition of "parachute payment" pursuant to Q/A–9 of this section.

*Example (2).* Assume the same facts as in example (1), except that the employment contract with Corporation N does not provide that amounts are payable under the contract only for the portion of the term for which A remains employed by Corporation N. Shortly after the change in ownership, and despite A's request to remain employed by Corporation N, A's employment with Corporation N is involuntarily terminated. Shortly thereafter, A obtains employment with Corporation O. A commences a civil action against Corporation N, alleging breach of the employment contract. In settlement of the litigation, A receives an amount equal to the present value of the compensation A would have received under the contract with Corporation N, reduced by the amount of compensation A otherwise receives from Corporation O during the period that the contract would have been in effect. A showing of the facts described above (and in the absence of contradictory evidence) is regarded as clear and convincing evidence that the amount A receives as damages is reasonable compensation for personal services to be rendered on or after the date of the change in ownership. Therefore, the amount received by A is exempt from the definition of "parachute payment" pursuant to Q/A–9 of this section.

Q–43: Is any particular type of payment generally considered reasonable compensation for personal services actually rendered before the date of a change in ownership or control?

A–43: (a) Yes. Payments of compensation earned before the date of a change in ownership or control generally are considered reasonable compensation for personal services actually rendered before the date of a change in ownership or control if they qualify as reasonable compensation under section 162.

Q–44: May severance payments be treated as reasonable compensation?

A–44: No. Severance payments are not treated as reasonable compensation for personal services actually rendered before, or to rendered on or after, the date of a change in ownership or control. Moreover, any damages paid for a failure to make severance payments are not treated as reasonable compensation for personal services actually rendered before, or to be rendered on or after, the date of such change. For purposes of this section, the term "severance payment" means any payment that is made to (or for the benefit of) a disqualified individual on account of the termination of such individual's employment prior to the end of a contract term, but shall not include any payment that otherwise would be made to (or for the benefit of) such individual upon the termination of such individual's employment, whenever occurring.

*Miscellaneous Rules*

Q–45: How is the term "corporation" defined?

A–45: For purposes of this section, the term "corporation" has the meaning prescribed by section 7701(a)(3) and shall include a publicly traded partnership treated as a corporation under section 7704 (a).

Q–46: How is an affiliated group treated?

A–46: For purposes of this section, and except as otherwise provided in this section, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504 (b)) are treated as one corporation. Rules affected by this treatment of an affiliated group include (but are not limited to) rules relating to exempt payments of certain corporations [Q/A–6, Q/A–7 (except as provided therein)], payor of parachute payments [Q/A–10], disqualified individuals [Q/A–15 through Q/A–21 (except as provided therein)], rebuttal of the presumption that payments are contingent on a change [Q/A–26 except as provide therein], change in ownership or control [Q/A–27, 28, 29], and reasonable compensation [Q/A–42, Q/A–43, and 44].

*Effective Date*

Q–47: What is the general effective date of section 280G and this section?

A–47: In general, section 280G and this section apply to payments under agreements entered into or renewed after June 14, 1984. Any agreement that is entered into before June 15, 1984, and is renewed after June 14, 1984, is to be treated as a new contract entered into on the day the renewal takes effect. (See Q/A–48 regarding application of section 280G and this section with respect to contracts entered into on or before June 14, 1984, and amended or supplemented after that date.)

Q–48: How is a contract that is cancellable at will treated for purposes of the effective date of section 280G and this section?

A–48: (a) For this purpose, a contract that is terminable or cancellable unconditionally at will by either party to the contract without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a contract is not treated as so terminable or cancellable if it can be terminated or cancelled only by terminating the employment relationship or independent contractor relationship of the disqualified individual.

(b) The following examples illustrate the principles of this A–48:

*Example (1).* Before June 15, 1984, a corporation and a disqualified individual enter into a contract providing for payments to the individual contingent on a change in the ownership or control of the corporation. The corporation may cancel the contract unconditionally at will by giving 3 months notice. Thus, the earliest date that any such cancellation after June 14, 1984, could be effective is September 15, 1984. The contract is treated as a new contract entered into on September 15, 1984, whether or not it is in fact cancelled. Therefore, section 280G and this section apply to all payments made or to be made under the contract in taxable years of the individual that end on or after September 15, 1984.

*Example (2).* On January 1, 1984, a corporation and a disqualified individual enter into a contract providing for payments to the individual contingent on a change in the ownership or control of the corporation. The corporation has a right to terminate the employment of the individual with or without cause, and the individual has the right to cease working for the corporation; otherwise, the contract is not terminable by either party. Since the contract is terminable only by terminating the employment relationship between the parties, it is not treated as terminable at will. Thus, since the contract was entered into on or before June 14, 1984, no payments under the contract are subject to section 280G or this section.

Q–49: Do section 280G and this section apply to payments under some agreements entered into on or before June 14, 1984, that are not renewed after this date?

A–49: Yes. Section 280G and this section apply to payments under a contract entered into on or before June 14, 1984, if the contract is amended or supplemented after June 14, 1984, in significant relevant respect. For this purpose, a "supplement" to a contract is defined as a new contract entered into after June 14, 1984, that affects the trigger, amount, or time of receipt of a payment under an existing contract.

Q–50: Under what circumstances is a contract considered to be amended or supplemented in significant relevant respect?

A–50: Except as otherwise provided in Q/A–51 of this section, a contract is considered to be amended or supplemented in significant relevant respect if provisions for payments contingent on a change in ownership or control ("parachute provisions"), or provisions in the nature of parachute provisions, are added to the contract, or are amended or supplemented to provide significant additional benefits to the disqualified individual. Thus, for example, a contract generally is treated as amended or supplemented in significant relevant respect if it is amended or supplemented:

(a) To add or modify, to the disqualified individual's benefit, a change in ownership or control trigger;

(b) To increase amounts payable that are contingent on a change in ownership or control (or, where payment is to be made under a formula, to modify the formula to the disqualified individual's advantage); or

(c) To accelerate, in the event of a change in ownership or control, the payment of amounts otherwise payable at a later date.

For purposes of A–50, a payment will not be treated as being accelerated in the event of a change in ownership or control if the acceleration does not increase the present value of the payment.

Q–51: Will normal adjustments in an employment contract cause the contract to be treated as amended or supplemented in significant relevant respect?

A–51: No. A contract entered into on or before June 14, 1984, will not be treated as amended or supplemented in significant relevant respect merely by reason of normal adjustments in the terms of employment relationship or independent contractor relationship of the disqualified individual. Whether an adjustment in the terms of such a relationship is considered normal for this purpose depends on all of the facts and circumstances of the particular case. Relevant factors include, but are not limited to, the following:

(a) The length of time between the adjustment and the change in ownership or control;

(b) The extent to which the corporation, at the time of the adjustment, viewed itself as a likely takeover candidate;

(c) A comparison of the adjustment with historical practices of the corporation;

(d) The extent of overlap between the group receiving the benefits of the adjustment and those members of that group who are the beneficiaries of pre-June 15, 1984, parachute contracts; and

(e) The size of the adjustment, both in absolute terms and in comparison with the benefits provided to other members of the group receiving the benefits of the adjustment.

Q–52: What are some examples illustrating the principles of Q/A–49, Q/A–50, and Q/A–51 of this section?

A–52: The following examples illustrate these principles:

*Example (1).* Corporation M grants a nonqualified stock option to a disqualified individual before June 15, 1984. After June 14,

1984, at a time when the option is currently vested and exercisable by the individual regardless of whether a change in ownership or control occurs, Corporation M amends the option to permit the individual to surrender it for cash or other property equal to the fair market value of the stock that would have been received if the option had been exercised (minus the exercise price of the option). Since the individual could have exercised the option and then sold the stock received upon the exercise, the amendment does not provide significant additional benefits to the individual. Hence, the amendment does not cause payments under the option to become subject to section 280G and this section.

*Example (2).* Corporation N and A, a disqualified individual, enter into an employment contract before June 15, 1984, that provides for a payment, contingent on a change in the ownership or control of Corporation N, equal to 4 times A's base amount. After June 14,1984, and at a time when Corporation N did not view itself as a likely takeover candidate, Corporation N increases A's annual compensation by 25 percent to reflect additional managerial responsibilities. Such increase is consistent with the historical practices of Corporation N. Although the amount payable to A contingent on a change in ownership is increased, the employment contract is not treated as amended in significant relevant respect because, under these facts (and in the absence of contrary evidence), the amendment to the contract is treated as a normal adjustment in the terms of the employment relationship.

*Example (3).* Before June 15, 1984, Corporation O enters into contracts with disqualified individuals A, B, and C, providing for payments contingent on a change in the ownership of Corporation O equal to 4 times each individual's base amount. After June 14, 1984, Corporation O, consistent with its historical practices, grants identical nonvested stock options to numerous disqualified individuals, including A, B, and C. All of these new options provide that the vesting of all such options will be accelerated if a change in the ownership or control of Corporation O occurs. Section 280G and this section apply to payments under the options granted after June 14, 1984. However, the granting of these options does not cause the contracts that were entered into before June 15, 1984, to be treated as amended or supplemented in significant relevant respect because, under these facts (and in the absence of contrary evidence), the granting of options is treated as a normal adjustment in the terms of the employment relationship.

**Lawrence B. Gibbs**

*Commissioner of Internal Revenue.*

[FR Doc. 89-10603 Filed 5-4-89; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Part 1

**[IA-56-87]**

**RIN 1545-AK20**

## Minimum Tax, Tax Benefit Rule

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the application of the tax benefit rule to the minimum tax. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Except as otherwise provided, the amendments are proposed to be effective for items of tax preference that are subject to the minimum tax imposed by section 56 of the Code and arise in taxable years beginning after December 31, 1975, and before January 1, 1987. Written comments and requests for a public hearing must be delivered or mailed by July 5, 1989.

**ADDRESS:** Send comments and requests for a public hearing to: Internal Revenue Service, Attn: CC:CORP:R:T (IA-56-87), Room 4429, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** William A. Jackson, 202-566-4196, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collections of information in this regulation are contained in paragraphs (c)(5)(iii)(B) and (e)(3) of § 1.58-9T. This information is required by the Internal Revenue Service to administer section 58 (h). Respondents are taxpayers who are subject to the minimum tax and who file amended returns under § 1.58-9T(e)(3), or who make the election under § 1.58-9T(c)(5)(iii)(B).

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

*Estimated Total Annual Reporting Burden:* 40 hours. The estimated annual burden per respondent or recordkeeper varies from 10 minutes to 14 minutes, depending on individual circumstances, with an estimated average of 12 minutes.

*Estimated Number of Respodents:* 200.

*Estimated Annual Frequency of Responses:* 1.

### Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under section 58 of the Internal Revenue Code of 1954.

For the text of the temporary regulations, see T.D. 8249, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the regulations.

### Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291, and that a Regulatory Impact Analysis therefore is not required. Furthermore, it has been certified that this rule, if issued, will not have a significant economic impact on a substantial number of small entities because the taxpayers that are subject to these regulations tend to be large corporations. It would not significantly alter the reporting or recordkeeping duties of small entities. A regulatory flexibility analysis is therefore not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Comments and Requests for a Public Hearing

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

### Drafting Information

The principal author of these proposed regulations is William A. Jackson of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**Michael J. Murphy,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 89-10765 filed 5-4-89; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD1 89-011]**

## Great Kennebec River Whatever Race, Gardiner, ME

**AGENCY:** Coast Guard; DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal that would establish permanent special local regulations for the Great Kennebec River Whatever Race. The event, sponsored each year by the Kennebec Valley Chamber of Commerce, is a marine parade to celebrate the cleanup of the Kennebec River. During the one day event, the regulations would place operating restrictions on watercraft operating on the Kennebec River between Augusta and Gardiner, Maine. The potential hazards to participants, spectators and transiting vessels are such that, each year, in the interest of safety of life on the navigable waters of the United States, the Coast Guard district commander has issued special local regulations governing the conduct of the regatta. By adopting permanent regulations, the Coast Guard will continue to provide the same level of public safety at reduced administrative cost. Public notice of the exact dates of the regatta will be published each year in a **Federal Register** Notice and in the Coast Guard Local Notice to Mariners.

**DATES:** Comments must be received on or before June 19, 1989.

**ADDRESSES:** Comments should be mailed to Commander (b), First Coast Guard District, Captain John Foster Williams Coast Guard Building, 408 Atlantic Avenue, Boston, MA 02210-2209. The comments and other material referenced in this notice will be available for inspection and copying in Room 428 at the same address. Normal office hours are between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

**FOR FURTHER INFORMATION CONTACT:** Captain Ronald L. Blake, (617) 223-8310.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD1 89-011) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

### Drafting Information

The drafters of these regulations are Lt. L. Brown, project officer, First Coast Guard District Boating Affairs Branch and Lt. J.B. Gately, project attorney, First Coast Guard District Legal Office.

### Discussion of Regulations

The Great Kennebec River Whatever Race is a marine parade sponsored by the Kennebec Valley Chamber of Commerce and is held annually to celebrate the cleanup of the Kennebec River. Approximately 3,000 people and 250 unpowered watercraft of all description are expected to participate along with some 100 spectator craft. The only requirement placed by the sponsor on participants is that all entries be unpowered: traditionally the event attracts a great number of homemade rafts of unique design. The race will start at the U.S. Route 201-202 bridge in Augusta, Maine and finish at the Maine Route 126 bridge connecting Randolph and Gardiner, Maine. The event will be patrolled by the Coast Guard, Coast Guard Auxiliary, state and local law enforcement organizations, and sponsor provided patrol craft. The regulations will serve to restrict the operating speed of vessels in the race area and require race participants (those persons on unregistered and undocumented vessels) to wear Coast Guard approved personal flotation devices.

### Federalism Assessment

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

### Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The effective period of regulation is short and the only adverse impact to uninterested and commercial vessels is that navigation on the regulated area (approximately five (5) miles of the river) will be reduced to five (5) mph or "No Wake" speed, whichever is less. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

### Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

## PART 100—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section 100.108 is added to read as follows:

**§ 100.108 Great Kennebec River Whatever Race, Gardiner, Maine.**

(a) *Regulated area.* That portion of the Kennebec River, extending bank to bank, between the Maine Route 126 bridge (at latitude 44-14 North, longitude 69-46-15 West connecting Randolph and Gardiner, Maine) to the U.S. Route 201-202 bridge (at latitude 44-18-43 North, longitufe 69-46-26 West in Augusta, Maine).

(b) *Special local regulations.* The following requirements will be placed

on vessels operating within the regulated area during the effective period of regulation:

(1) All persons on board any vessel which does not possess a valid State registration or Federal documentation shall at all times wear a Coast Guard approved Type I, II, or III personal flotation device (life jacket).

(2) Spectating and/or transiting vessels shall not exceed five (5) mph of "No Wake" speed, whichever is slower.

(3) All vessels shall exercise extreme caution when operating near parade participants and shall be alert for disabled craft and persons possibly falling overboard.

(4) All vessel operators shall immediately follow any instruction given by Coast Guard patrol personnel.

(5) Coast Guard Auxiliarists will be patrolling the regatta to advise participants, spectators, and transiting vessels the content of these regulations.

(6) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if he or she is actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) *Effective dates.* These regulations will become effective at 6:00 a.m. on July 2, 1989 and terminate at 6:00 p.m. on July 2, 1989. Each year thereafter, the regulations will be in effect for the same time period on the first Sunday of July. Public notification will be acheived through the Coast Guard Local Notice to Mariners.

Dated: April 10, 1989.

**R. I. Rybacki,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 89-10773 Filed 5-4-89; 8:45 am]

BILLING CODE 4910-14-M

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## DEPARTMENT OF INTERIOR

### National Park Service

### 36 CFR Part 9

### Mining and Mining Claims

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is publishing for public review and comment revisions to existing NPS regulations at 36 CFR Part 9, Subpart A. These regulations govern the exercise of mineral rights within national Park System units in connection with valid mining claims held under the mining Law of 1872. The existing regulations were promulgated in 1977. Since that time, the NPS has become aware that the regulations contain a provision that could be interpreted to preclude the use of water by mining claimants who have not used water in the past regardless of the environmental soundness of their proposed operations. As a result, the NPS is proposing to revise these provisions to clarify that claimants may use water in connection with their mining operations provided that their proposed use is authorized under State law. The NPS also is proposing to make one technical change to update a section of the regulations to apply to all units of the National Park System in Alaska, not just national monuments.

**DATES:** Comments must be received on or before July 5, 1989 to be assured of receiving consideration.

**ADDRESSES:** Please submit written comments to the Mining and Minerals Branch, Land Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225-0287.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Ernenwein, Mining and Minerals Branch, Land Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225-0287, (303) 969-2090.

**SUPPLEMENTARY INFORMATION:** The Mining Law of 1872 (30 U.S.C. 21 *et seq.*), opened all public lands, except those specifically closed, to prospecting by individuals and companies for valuable deposits of minerals. Those who properly locate valuable mineral deposits and properly record their claims with the appropriate governmental offices gain the right to extract minerals and use the land within the boundaries of their claims for mineral development. These rights are maintained as long as the claimants fulfill the requirements for retaining the claims. In addition, a valid mineral discovery generally affords the claimant with the option to take their claims to patent, whereby they acquire title to the property within the boundary of their claims.

When units of the National Park System were established, after the enactment of the 1872 Mining Law, they were statutorily closed to the operation of the mining laws with the exception of the following six units: Death Valley National Monument, Crater Lake National Park, Mt. McKinley National Park (now part of Denali National Park and Preserve), Glacier Bay National Monument (now part of Glacier Bay National Park and Preserve), Coronado National Memorial, and Organ Pipe Cactus National Monument. Today, 24 National Park System units have mining claims within their boundaries. The claims were either located during the period when the units enumerated above were open to the location of mining claims, or on public lands that were later incorporated into a new or expanded unit of the National Park System. Where the claims have not been extinguished by Federal acquisition, through successful challenge of their validity, or through the failure of claimants to comply with procedural requirements, the claimants continue to have a legal right to develop the minerals.

Concerned both with the number of claims that were being filed in the six units open to mineral entry, and with the potential adverse impacts to park resources and values if mineral extraction activities were not properly controlled, Congress passed the mining in the Parks Act in 1976 (16 U.S.C. 1901 *et seq.*). Through this Act, Congress repealed the application of the mining law to those six National Park System units that were open to mineral entry and location. Congress also directed the Secretary of the Interior to promulgate regulations governing "all activities resulting from the exercise of valid existing mineral rights on patented and unpatented claims within any area of the National Park System * * *" (16 U.S.C. 1902).

The NPS promulgated the regulations pursuant to the Mining In The Parks Act on January 26, 1977, and codified them at 36 CFR Part 9, Subpart A. As directed by Congress, the regulations govern all mineral activities in connection with both patented and unpatented claims within any unit of the National Park System, no matter when the claim was located or patented, and without regard to whether access to the claim is across federally owned or controlled lands.

The existing regulations at 36 CFR Part 9, Subpart A have been in effect for the past 11 years. In applying the regulations in Alaska, the NPS has become aware that they contain language regarding the use of water that unintentionally could prove to be a "catch-22" to claimants. A literal interpretation of the regulations requires that claimants have a perfected water right before they use water in connection with their mining operations; however, to secure a perfected water right claimants must use water. This approach, based on an appropriative State water system, fails to recognize alternative State systems or variations for allocating water. To remedy this situation, the NPS proposes to have

claimants follow State law regarding the use of water in connection with mineral development on their claims inside parks. A claimant's compliance with State water law requirements will be one of seveal factors considered by the NPS in determining whether to approve a proposed plan of operations under the NPS's regulations. Other factors exist at 36 CFR 9.10, *Plan of operations approval.* NPS is also proposing to clarify that in Alaska the Supplemental Claim Information Statement can be used in all units of the National Park System not just national monuments. A detailed discussion of these proposed changes is set forth below.

**Proposed Revisions to the Existing 36 CFR Part 9, Subpart A Regulations**

*Existing § 9.8 Use of water*

Existing § 9.8 (a) and (b) specify the circumstances under which water may be used from a source within a National Park System unit in connection with a mining operations. The existing regulatory language could be interpreted to preclude the NPS Regional Director from approving a plan of operations which requires the use of water unless the claimant has a perfected water right under an appropriative State water law system. This result was not intended. The regulations do not expressly recognize other State law systems under which water rights are established or decided. For example, a State may allow an operator to use water on a mining claim with only a conditional right (for example, a water use permit from the appropriate State). However, the existing regulations at § 9.8 could be interpreted to preclude NPS's approval of a proposed plan unless the operator possesses a "perfected right," and can demonstrate possession of a perfected right with appropriate evidence (for example, a certificate of appropriation). To rectify this technical problem, the NPS proposes to delete references to perfected water rights, priority dates and continued beneficial use. In their stead, the NPS proposes to include language that the claimant possess a State recognized water right.

In addition, the NPS proposes to revise the regulations to allow the NPS to use any water systems on Federal lands within unit boundaries in the case of emergencies such as fires or when human lives are at risk. This subsection is numbered as new § 9.8(b).

*Existing § 9.9 Plan of operations*

The NPS proposes to replace the reference to "a National Monument in Alaska" in § 9.9(b)(5) with "a unit of the National Park System in Alaska." Under existing § 9.9(b)(5), mining claimants with unpatented mining claims in National Monuments in Alaska must submit completed Supplemental Claim Information Statements as part of their plans of operations. This subsection was adopted in 1979 after a Presidential Proclamation under the 1906 Antiquities Act (16 U.S.C. 431–33) substantially expanded the National Park System to include a number of National Monuments. The Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3101 *et seq.*) subsequently expanded the National Park System in Alaska and/or redesignated several units as National Parks and Preserves, National Historic Parks and a National Wild River. Thus, the reference in § 9.9(b)(5) needs to be updated to reflect the change in park unit titles and to clarify that claimants with unpatented mining claims in any unit of the National Park System in Alaska must submit the Supplemental Claim Information Statement with their plans of operations.

**Public Participation**

The policy of the NPS, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the above noted address. Because communications can be difficult in Alaska, where a number of parties concerned with these proposed regulations live, the NPS is providing a 60-day public comment period.

**Federal Paperwork Reduction Act**

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**Compliance With Other Laws**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*), the NPS has prepared an environmental assessment (EA) of these proposed regulations. The EA examines whether implementation of the proposed regulations will be a major Federal action that would have a significant effect on the quality of the human environment, requiring the preparation of an environmental impact statement. The EA is on file in the following NPS offices: Mining and Minerals Branch, Land Resources Division, Room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127 (WASO 660), Washington, DC 20013–7127); the Mining and Minerals Branch, Land Resources Division, Room 221, 12795 West Alameda Parkway, Lakewood, Colorado (P.O. Box 25287, Denver, Colorado 80225–0287); and the Alaska Regional Office, Room 206, 2525 Gambell Street, Anchorage, Alaska (Anchorage, Alaska 99503). The EA will be available for public inspection and comment for a period running concurrently with the comment period for these proposed regulations.

The NPS has determined and the Department of the Interior has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rule has been reviewed in conformity with Executive Order 12291 and has been classified as "not major." This action does not constitute a major rule since its implementation will not result in: (i) An annual effect on the economy of $100 million or more; (ii) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographic region; or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

**List of Subjects in 36 CFR Part 9**

Environmental protection, Mines, National Parks, Oil and gas exploration, Public Lands—Mineral resources, Public lands—Rights-of-way.

**PART 9—[AMENDED]**

For reasons set out in the preamble, Title 36, Chapter I, Part 9, Subpart A of the Code of Federal Regulations, is proposed to be amended as set forth below.

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

**Authority:** Mining Law of 1872 (R.S. 2319; 30 U.S.C. 21 *et seq.*); Act of August 25, 1916 (39 Stat. 535, as amended (16 U.S.C. 1 *et seq.*)); Act of September 28, 1976 (90 Stat. 1342 (16 U.S.C. 1901 *et seq.*)).

2. Section 9.8 is revised to read as follows:

**§ 9.8 Use of water.**

(a) The Regional Director shall not approve a proposed plan of operations requiring the use of any surface or subsurface water taken from within the boundaries of any unit unless the proposed use of such water is recognized under the State law and is in compliance with all applicable Federal, State and local laws and regulations.

(b) The Regional Director may prescribe that any operation that uses water allow for the use of such water by the National Park Service in the case of an emergency as determined by the Superintendent.

**§ 9.9 [Amended]**

3. Section 9.9(b)(5) is amended by revising the phrase "a National Monument in Alaska" to read "a unit of the National Park System in Alaska."

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

Date: February 22, 1989.

[FR Doc. 89-10860 Filed 5-4-89; 8:45 am]

BILLING CODE 4310-70-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Ch. 1

**[Gen. Docket No. 89-89; FCC 89-117]**

## Broadcast Television and Satellite Services; Syndicated Exclusivity Requirements for Television Broadcast Signals Delivered by Satellite to Home Satellite Earth Station Receivers

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission seeks comment on the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming for private home viewing of secondary transmissions by satellite of broadcast station signals similar to the rules issed by the Commission with respect to syndicated exclusivity and cable television. Specific comment is also requested on the precise form syndicated exclusivity rules in the satellite context should take, in the event it is determined that such rules are feasible. This action is required by the Satellite Home Viewer Act of 1988, which directs the Commission to determine the feasibility of such rules and to adopt them if they are found to be feasible.

**DATES:** Comments are due by July 7, 1989, and reply comments are due by August 4, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** David E. Horowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Inquiry and Notice of Proposed Rulemaking* (*Notice*) in Gen. Docket No. 89-89, adopted April 12, 1989, and released April 28, 1989. The complete text of this *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of Notice of Inquiry and Notice of Proposed Rulemaking

1. On November 16, 1988, the President signed into law the Satellite Home Viewer Act of 1988 ("1988 Act"), Pub. L. No. 100-667, 102 Stat. 3949 (amending 17 and 47 U.S.C.). Section 203 of the 1988 Act added a new section 712 to the Communications Act of 1934, as amended, that requires the Commission to initiate a combined notice of inquiry and proposed rule making by May 1, 1989. According to the 1988 Act, we are to initiate this proceeding for the purpose of determining the feasibility of imposing syndicated exclusivity rules with respect to the delivery of syndicated programming (as defined by the Commission) for private home viewing of secondary transmissions by satellite of broadcast station signals, similar to the rules we issued with respect to syndicated exclusivity and cable television. In the event we find that such rules in the satellite context are feasible, the 1988 Act requires us to adopt them.

2. According to the statute and its legislative history, the Commission's principal task here is to solicit comment on the "feasibility" of imposing syndicated exclusivity rules that are similar, but not necessarily identical, to those promulgated in the cable/broadcast context. The cable rules will allow a local broadcaster to obtain exclusive rights to syndicated programming and to exert such rights against cable systems. In extending syndicated exclusivity regulation to the satellite context, such rights could be asserted against satellite carriers that retransmit to home satellite dish ("HSD") owners the same programming for which local broadcasters have exclusive exhibition rights.

3. In considering the feasibility of applying some form of syndicated exclusivity rules to the HSD market, we discern two broad areas of inquiry. First is whether the technology exists for satellite carriers to delete protected programs and substitute others, and if so, the additional cost of using it. The second is whether other means of compliance, such as purchase by satellite carriers of national or local rights, are feasible alternatives to technical solutions.

4. It is our understanding that the current technology permits satellite carriers to delete programming, but that systems now in use may have certain limitations, such as an inability to delete signals in numerous geographic areas or to delineate geographic zones with great precision. With respect to substitution functions, there remains the question of whether satellite carriers are technically able to substitute programming for that deleted. The most straightforward method of substitution would require at least one extra channel, other than the one that carries the programming subject to deletion, in order to carry other programs. This might significantly increase the cost of service and not be economically feasible for HSD delivery systems, in light of the relatively small home earth station market served by satellite carriers. Commenters should address whether this or other methods of programming substitution are feasible.

5. We seek comment on the precision and efficiency with which these deletion and program substitution functions can be performed. Commenters should address whether adequate equipment for such purposes is now in use, is in existence, or can be designed. If equipment does not now exist, we request estimates on development time and cost. In responding to these questions, commenters should give a function-by-function breakdown. In addition, we seek comment on the capacity and degree of precision that any such equipment might have. If, for instance, a satellite carrier could only delete programming in a limited number of geographic areas, or if geographic areas could not be precisely delineated, commenters should specify these facts, explain the technological basis and detail the possibilities of achieving greater precision and capacity. We also wish to know how costs would be affected by the precision and capacity of the system in defining the area in which signals would be deleted and by the number of different programs and areas to be simultaneously deleted.

6. We also seek specific and detailed proposals that may yield alternative technical solutions. In this connection, we seek comment on whether syndicated exclusivity rules can be regarded as "feasible" even if satellite carriers cannot achieve reasonable efficient deletion and substitution performance. Alternative solutions could include deletion capabilities

without the ability to substitute programming, or an inability to delete programming within precise geographic areas.

7. Our responsibility for determining the feasibility of developing syndicated exclusivity rules for the HSD market also requires that we consider the costs that compliance would place on satellite carriers, and whether the costs of such regulation would render rules infeasible as a practical matter. We recognize that the legislative history of the 1988 Act states that rules for the HSD market should not be deemed "infeasible" if the only impediment is that they are incrementally more costly for satellite carriers than for cable systems. This legislative history also states that our feasibility assessment is to be "comprehensive" and "broadbased and balanced." By "incrementally more costly," we believe Congress meant costs not unreasonably greater than that required in the cable context, but did not mean costs of a totally different magnitude. Therefore, excessive implementation costs would raise legitimate questions regarding feasibility. By excessive costs we mean costs that would completely overwhelm any asserted benefits of syndicated exclusivity for the HSD market. Accordingly, we solicit comment on the costs involved, such as those associated with the purchase of technical equipment and performing administrative duties, in relation to the congressionally-stated rationale for syndicated exclusivity in the HSD market.

8. There are a variety of additional means that do not require the purchase of hardware capable of deleting and substituting distant signal programming that satellite carriers might employ in order to comply with syndicated exclusivity rules. For example, superstations might avoid having their syndicated programming deleted in some or all markets by purchasing national rights or by persuading syndicators not to sell conflicting local exclusivity rights to local broadcasters. These types of possible contractual arrangements could obviate any need for potentially expensive equipment to delete and substitute programs. Therefore, we seek comment on the feasibility of rules in view of these possible compliance mechanisms that do not depend upon the technological and equipment concerns discussed above.

9. The next area of inquiry involves the potential coverage of the rules. We therefore solict comment on which parties should be entitled to the benefits of syndicated exclusivity protection under any HSD rules we might adopt, and which parties should be subject to the obligations under such rules. Based on the directive of the 1988 Act that we use syndicated exclusivity for cable as a model, we believe that the opportunity to purchase syndicated exclusivity in the HSD context should be available to all local television broadcast stations. We solicit comment on this view. We also seek comment on whether the initial distributors of syndicated product should be eligible for protection from the unauthorized retransmission of their programming by satellite carriers, analogous to the protection that distributors receive under § 76.153(b) of our cable rules.

10. With respect to obligations, we seek comment on which party in an HSD delivery system should be responsible for ensuring that syndicated exclusivity requests are honored. Congress appears to have intended that local broadcasters be entitled to assert syndicated exclusivity rights against satellite carriers, and that the carriers be liable for compliance with any syndicated exclusivity rules. Accordingly, we propose placing on satellite carriers, as defined in the 1988 Act, the responsibility for compliance with any syndicated exclusivity rules we may adopt. It may also be appropriate to place some compliance obligations on third parties which are responsible for marketing and distributing retransmissions to HSD owners, but which do not own or use the satellite capacity (such as a third party program packager). While such parties are not classified as "satellite carriers" under the 1988 Act, they collect fees directly from the HSD subscribers and will have access to the same information as does the carrier about the subscriptions and retransmissions involved. We therefore request commenters to address whether we should place the obligations and responsibilities of syndicated exclusivity on those third parties who actually market the program service to individual subscribers—rather than on satellite carriers which retransmit the distant signal indirectly through these parties. Commenters should also consider the possibility of imposing joint responsibility. We request comment on whether such an approach would entail problems of enforcement or jurisdiction because these third parties may not be Commission licensees.

11. Finally, in keeping with congressional intent, we propose that any syndicated exclusivity rules we may adopt for the HSD market parallel the existing cable rules as much as possible, and we solicit comment on what kinds of modifications to the cable rules might be necessary in view of the differences between the cable and HSD industries. We are particularly interested in the following areas of concern. First, commenters should address the geographic extend of exclusivity that should be permitted. For example, our syndicated exclusivity rules for cable generally provide for either (a) a 35-mile maximum zone of protection, which enables a broadcaster to purchase exclusivity rights against all cable systems situated up to 35 miles from the broadcaster's reference point, or (b) nationwide exclusivity, which allows a broadcaster to purchase rights that extend throughout the United States.

12. Second, we welcome input on the appropriate notification procedures that should be adopted. We propose provisions similar to the notice requirements in our present syndicated exclusivity rules, which generally require a local broadcaster to give the cable operator notice of having signed the exclusivity agreement with the program supplier, along with other required information, within 60 days of signing the contract, and the broadcaster is not entitled to exclusivity protection until at least 60 days after the cable operator receives this notice.

13. Third, we request comment on whether syndicated exclusivity rules for the HSD market should have a "sunset" provision that corresponds to the December 31, 1994, expiration of the compulsory license for satellite carriers. Although the cable rules do not have such a sunset provision (because the cable compulsory license has no expiration date), we have observed that if Congress rescinds the cable compulsory license, syndicated exclusivity rules in the cable context would appear to be superfluous. We also propose a transition period at the outset of the HSD syndicated exclusivity regime to allow satellite carriers to make the necessary technical and administrative adjustments to syndicated exclusivity, and we seek comment on the appropriate length of this period.

14. Finally, we ask for comment on which subpart of the Commission's rules should contain the HSD syndicated exclusivity rules, and whether we would need to modify sections of existing rules to accomodate HSD rules. Because satellite carriers may be licensees of fixed satellites or fixed satellite earth stations, Part 25 of the Code of Federal Regulations—which governs operations by fixed satellite licensees—may be appropriate.

**Paperwork Reduction Act Statement**

15. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified information collection requirements on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

**Ex Parte Consideration**

16. This is a non-restricted notice and comment proceeding. *See generally* §§ 1.1200, *et seq.*, of the Commission's Rules, 47 CFR 1.1200, *et seq.*, for rules governing permissible *ex parte* contacts.

**Comment Information**

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 7, 1989, and reply comments on or before August 4, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

**Initial Regulatory Flexibility Act Analysis**

18. As required by section 603 of the Regulatory Flexibility Act of 1980, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. In the IFRA, we observe that the type of small entities affected would, at this point in the proceeding, depend on the record established in response to this *Notice*. Similarly, the compliance burden will depend on the record compiled here. If the record indicates that syndicated exclusivity rules could appropriately be imposed on HSD delivery, satellite carriers and television broadcasters would be affected by whatever rules are adopted.

19. Written public comments are requested on the IFRA, set out in full in the Commission's complete decision. These comments are to be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IFRA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601, *et seq.*. (1981)).

20. Authority for this proposed rule making is contained in sections 4(i), 303, 308(b), 309(g), 319, 403 and 712 of the Communications Act of 1934, as amended.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89-10845 Filed 5-4-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-96, RM-6658]**

## Radio Broadcasting Services; Harrisonville and Carrollton, MO and Girard, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by KCFX Radio, Inc., proposing the substitution of FM Channel 266C1 for Channel 264C at Harrisonville, Missouri, and modification of the license for Station KCFX (FM) to specify Channel 266C1. The coordinates for Channel 266C1 are 39-00-57 and 94-30-24. To accommodate the substitution at Harrisonville, it would be necessary to substitute FM Channel 256A for Channel 266A at Girard, Kansas, Station KYPG. The coordinates for Channel 256A at Girard are 37-29-02 and 94-50-08. Lowell Communications, L.P., licensee of Station KYPG, has filed a statement consenting to the channel substitution. This document also requests comments on the substitution of Channel 264C1 for Channel 266C at Carrollton, Missouri, and modification of the license for Station KMZU to specify Channel 264C1. Kanza, Inc., licensee of the Carrollton Station, has filed a statement consenting to the channel substitution. The coordinates for Channel 264C1 at Carrollton are 39-22-05 and 93-29-40.

**DATES:** Comments must be filed on or before June 23, 1989, and reply comments on or before July 10, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Martin R. Leader, John J. McVeigh, Fisher, Wayland, Cooper & Leader, 1255-23rd Steet, NW., Suite 800, Washington, DC 20037 (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-96, adopted April 19, 1989, and released May 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89-10844 Filed 5-4-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 89-95, RM-6569]**

## Radio Broadcasting Services; Churchville and Luray, VA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Peter W. Lechman, permittee for Channel 294A at Churchville, Virginia, proposing the substitution of Channel 292B1 for Channel 294A and modification of his construction permit to specify the higher class channel. In order to accomplish the Churchville substitution and provide that community with its first wide

coverage area FM service, the substitution of Channel 289A for Channel 292A (Station WLCC(FM)) at Luray, Virginia is required. The coordinates for Channel 292B1 at Churchville are 38–09–52 and 79–08–24, which is the existing construction permit site.

**DATES:** Comments must be filed on or before June 23,1989, and reply comments on or before July 10, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Southmayd, Powell & Taylor, 1764 Church Street, NW., Washington, DC 20036 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–95, adopted April 19, 1989 and released May 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio Broadcasting

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–10842 Filed 5–4–89; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 89–94, RM–6631]**

## Radio Broadcasting Services; Huron, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Dakota Broadcasting, Inc. proposing the substitution of Channel 256C1 for Channel 221A at Huron, South Dakota, and the modification of its license for Station KURO–FM to specify operation on the higher powered channel. Channel 256C1 can be allotted to Huron in compliance with the Commission's minimum distance separation requirements and can be used at the station's present transmitter site. The coordinates for this allotment are North Latitude 44–20–46 and West Longitude 98–12–34.

**DATES:** Comments must be filed on or before June 23, 1989, and reply comments on or before July 10, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ross A. Johnson, Vice President, Dakota Broadcasting, Inc., 50 Broadway, P.O. Box 8310, Fargo, North Dakota 58109–8310 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–94, adopted April 19, 1989, and released May 1, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1240(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Karl A. Kensinger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 89–10843 Filed 5–4–88; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**50 CFR Parts 14 and 17**

## Importation, Exportation, and Transportation of Wildlife; Special Rules for Import and Export of African Elephant Ivory

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to amend its regulations and special rules governing the import and export of African elephant ivory. The African Elephant Conservation Act of 1988 (hereafter the Act), enacted on October 7, 1988, significantly restricts the import and export of African elephant ivory and dictates substantial changes to the existing special rules.

Under the proposed rule, the Service would review the elephant conservation programs of African countries having wild elephant populations (ivory producing countries) to determine whether or not each country meets certain criteria. The Service would impose moratoria on imports of African elephant ivory from ivory producing countries and countries that import and export elephant ivory (intermediary countries) which fail to meet certain standards of elephant conservation, as defined in the Act. In accordance with the Act, the proposed rule also delineates permissible foreign commerce in raw and worked ivory.

**DATES:** Comments must be submitted on or before July 5, 1989.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law

Enforcement, Arlington Square Building, Room 520, 4401 North Fairfax Drive, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Senior Special Agent Michael Sutton at the above address ((703) 358–1949 or FTS 921–1949).

**SUPPLEMENTARY INFORMATION:**

## Background

The African elephant (*Loxdonta africana*) was listed as a threatened species under the Endangered Species Act of 1973 on May 12, 1978 (43 FR 20504). Under the authority of section 4(d) of the Endangered Species Act, the Service concurrently promulgated special rules for the import and export of raw and worked ivory, 50 CFR 17.40(e). These rules were amended on July 20, 1982 (47 FR 31384). The African elephant was also listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna an Flora (CITES) on February 4, 1977.

Despite this legal protection, poaching of elephants in Africa and worldwide illegal trade in African elephant ivory have continued at an alarming rate. Experts now consider the unlawful killing of African elephants for ivory the primary factor in the recent troubling decline of this species in the wild. For example, scientists working under the auspices of the United Nations Environment Programme, the Serengeti Wildlife Research Institute, and the World Wildlife Fund (WWF) found that elephant populations in East Africa (Kenya, Uganda, and Tanzania) have declined betwen 49% and 92% since 1973 as a result of poaching for ivory. Regional trends in elephant numbers range from –18% per year in the northern African savanna and –8% per annum in East Africa, to near stability in the protected areas of southern Africa. The consensus is that African elephant populations throughout the continent cannot sustain present levels of decline without becoming endangered.

Since 1977, when the African elephant was added to Appendix II of CITES, the parties have become increasingly concerned over the accelerating decline of the species. This concern has been reflected in a number of resolutions regarding the ivory trade at the biennial conferences of the parties in 1981, 1985, and 1987. In 1981, at the 3rd Conference of the parties, Resolution Conf. 3.12 recommended that parties impose several measures which more strictly controlled the trade in African elephant ivory than did the Convention alone. At the 5th Conference of the parties to CITES in 1985, the Secretariat was authorized to establish the Ivory Control System (Resolution Conf. 5.12). These procedures suggest steps that party nations should take to strictly control the import, export, and re-export of raw and worked ivory. The procedures were also designed to maximize the flow of data on international commerce in African elephant ivory to and from the Secretariat, which acts as a central clearinghouse of information on the ivory trade. It is the responsibility of individual party countries, such as the United States, to effectively control the ivory trade within their respective jurisdictions.

The United States is a major consumer of African elephant ivory, especially worked ivory, according to recent statistics compiled by the Service and WWF. Although relatively small amounts of raw ivory enter the United States each year (mostly hunting trophies), approximately 73 metric tons (18–33 million dollars worth) of worked ivory is imported, largely in the form of carved tusks and jewelry. WWF estimates that the United States accounts for aobut one-third of the reported world trade in worked ivory, and 10–12% of the total annual exports of ivory from Africa. Approximately 65% of the worked ivory is imported from Hong Kong, and the United States receives about 32% of Hong Kong's total exports of worked ivory, according to estimates by WWF-Hong Kong.

It is difficult for the United States to determine independently whether worked ivory presented for impact clearance came originally from a legal source or whether it was from poached elephants. Therefore, it has been necessary to rely on other countries' control procedures and enforcement programs to ensure the legality of ivory in commerce. In the past, the CITES parties generally agreed that if trade in raw ivory could be controlled, it would not be necessary to impose additional controls on worked ivory. However, the African Elephant and Rhino Specialist Group of the International Union for Conservation of Nature and Natural Resources (IUCN) Species Survival Commission estimates that most raw ivory now originates from poached elephants, and that the number of tusks taken from the wild in 1988 exceeded what the African countries declared acceptable for export under the CITES Ivory Control System, notwithstanding the ivory stocks on hand in some of these countries. Given the difficulties in controlling the international trade in raw ivory, it has become necessary to levy additional domestic controls on imports of worked ivory.

The provisions of the African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.*, went into effect on October 7, 1988. The Service believes that the Act and the proposed rule will implement and strengthen the CITES Ivory Control System in the United States and overseas, and will help to reduce the extent of the illegal ivory trade and its impact on African elephants in the wild. It is the intent of the Service in this rulemaking to further implement the Act in a manner which facilitates the preservation of the African elephant. This proposal does not, however, serve to delay the effectiveness of the Act itself, which was implemented by the Service on the date of enactment.

The Service also notes that section 2302 of the Act provides explicitly that the Act does not affect the authority of the Secretary under the Endangered Species Act. The Service intends the proposed rule to satisfy section 4(d) of the Endangered Species Act, 16 U.S.C. 1533(d), which requires that special rules for threatened species be "necessary and advisable to provide for the conservation of such species". However, the service is currently reviewing a petition to reclassify the African elephant from threatened to endangered under the Endangered Species Act. Therefore, the Service advises that based on the results of that review and the comments and additional information received during the public comment period, the special rules may be revised to preclude the importation of raw and/or worked ivory from any or all countries.

## Moratoria on Ivory Imports

Congress has found that a limited and carefully controlled amount of trade in African elephant ivory has the potential to benefit elephant populations by making their conservation of economic value to ivory producing countries. The sale of ivory from elephants that die naturally or are killed as part of necessary wildlife management operations, together with legal sport hunting, may stimulate revenues for elephant conservation programs in Africa.

Although Congress did not impose a total moratorium on commerce in African elephant ivory, the United States must be able to eliminate the importation of ivory coming from or through countries known to serve as entrepots for the illegal trade. That Act and the proposed rule set up a specific procedure whereby the Service will review the elephant conservation programs of ivory producing countries to

determine if these programs are adequate under a set of criteria established by section 2201 of the Act. In conducting this review and making determinations, the Service may consult with the countries involved, the CITES Secretariat, and others having expertise on the African elephant, as appropriate.

Under the proposed rule and section 2202 of the Act, the Service will establish moratoria on the importation of ivory from specific ivory production countries which do not meet all the criteria set forth in section 2201 of the Act. Similarly, moratoria will be established on the importation of ivory from intermediary countries that fall into any of the categories set forth in section 2202(b) of the Act. On December 27, 1988, acting in accordance with section 2202 of the Act, the Service imposed such moratoria on all countries which are not parties to CITES (53 FR 52242).

Consistent with section 2202(c) of the Act, the proposed rule provides for the suspension of a moratorium on ivory imports from a particular country if the Service determines, after notice and an opportunity for public comment, that the reasons for establishing the moratorium no longer exist.

**Sport Hunted Trophies**

Congress specifically addressed the importation of sport hunted elephant trophies containing ivory in section 2202(e) of the Act.

Under this section and the proposed rule, individuals may import trophy ivory that has been legally taken in an ivory producing country for which notice has been published in the **Federal Register** of the establishment of an export quota under the CITES Ivory Control System for the year of export. The country does not necessarily have to be a party to CITES. Upon notification by the CITES Secretariat, the Service will promptly publish a notice in the **Federal Register** announcing the establishment of annual ivory export quotas.

Under the Act, moratoria will not be imposed that would prohibit the import into the United States of trophy ivory that was legally taken in an ivory producing country which as submitted a quota to the CITES Secretariat.

**Confiscated Ivory**

In section 2202(f) of the Act, Congress specifically provided for the importation of ivory originating in unlawfully taken stocks which have been seized by ivory producing or intermediary countries and legally disposed of pursuant to the CITES Ivory Control System. The establishment of a moratorium on ivory imports would not be based solely on trade in legitimately confiscated ivory which has been exported from the country of seizure in accordance with the CITES Ivory Control System. However, these provisions would not apply if the proceeds from the sale of such confiscated ivory were used for any purpose other than to enhance wildlife conservation programs or the conservation purposes of CITES. It is the express intent of Congress that confiscated ivory be disposed of in an open and public manner that includes safeguards to prevent persons involved in elephant poaching and the illegal trade in ivory from acquiring confiscated ivory at auction or receiving any of the proceeds from its sale. Congress also directed the Service to use all authorized means to collect sufficient information to verify the terms and conditions under which each sale of confiscated ivory takes place and the manner in which the proceeds are allocated, prior to sanctioning the importation of ivory stemming from such a sale.

**Ray Ivory Imports**

The Act and the proposed rule significantly restrict commerce in raw African elephant ivory. Under current regulations (50 CFR 17.40(e)), raw ivory could have been imported if it:

1. Was from an elephant taken in a country that at the time of importation is a party to CITES;
2. Was imported from a country that is a party to CITES;
3. Was accompanied by proper CITES export permits and documentation under 50 CFR 23 which clearly show the country of origin of the ivory; and
4. Was properly marked, if feasible.

The Act (section 2203) and the proposed rule allow raw ivory to be imported only:

1. From an ivory producing country which is not subject to an ivory import moratorium at the time of exportation; and
2. If it was exported in compliance with the laws of the ivory producing country and accompanied by permits issued in accordance with the CITES Ivory Control System and 50 CFR Part 23.

The major effect of the Act and the proposed rule is that commercial shipments of raw ivory may only be imported from countries that have wild elephant populations, are parties to CITES, have submitted ivory export quotas to the CITES Secretariat, and are not subject to an ivory import moratorium. This precludes, for example, the importation of raw ivory from countries such as Hong Kong, Japan, and Singapore, since they have no wild elephants. However, since most raw ivory imports are sport-hunted trophies, this should not significantly restrict legitimate importers. The proposed rule would also make it much easier for Service law enforcement personnel to determine the legality of raw ivory shipments.

**Worked Ivory Imports**

Current regulations allowed the import of worked ivory if it:

1. Was imported from a country which is a party to CITES; and
2. Was accompanied by a valid CITES export permit or re-export certificate indicating the country of origin (per 50 CFR 23).

Under the new system established by the Act and the proposed rule, worked ivory may imported only:

1. From an ivory producing or intermediary country which is not subject to an ivory import moratorium at the time of exportation; and
2. If it is accompanied by a valid CITES export permit or re-export certificate, except for worked ivory imported as personal personal effects.

Countries exporting worked ivory are required to certify that the worked ivory was derived from a legal source by issuing a CITES export permit or re-export certificate. No worked ivory may imported that is from a country on which an ivory import moratorium has been imposed. In addition to the import restrictions established by these provisions, any worked ivory that was derived from raw ivory which was taken or exported in violation of the laws of a producing country would be subject to seizure under the Lacey Act, 16 U.S.C. 3372(a)(2)(A), whether or not a CITES permit has been issued for the export of that ivory.

**Exports**

Under current regulations, raw ivory could have been exported from the United States under a permit if the ivory was properly marked, where feasible. The Act now prohibits all exports of raw ivory from the United States, and this is reflected in the proposed rule. Historically, very little raw ivory has been exported from the United States, and Congress apparently determined that it would not be cost-effective to expend the resources necessary to bring the United States into compliance with the CITES Ivory Control System regarding the export of raw ivory. Moreover, it would be inconsistent for the United States, which is not an ivory producing country, to allow the export of raw ivory, when the Act prohibits the

import of raw ivory from non-producing countries. Worked ivory could still be exported under a permit issued by the Service's Office of Management Authority in accordance with 50 CFR 23.

**Licensing Requirement**

Section 2301 of the Act provides that it is unlawful for any person, without first having obtained the permission of the Secretary of the Interior, to commercially import or export African elephant ivory. Accordingly, the proposed rule requires that all persons who are engaged in the business of importing or exporting elephant ivory be licensed by the Service as provided in 50 CFR 14.91, regardless of the amount or value of their annual trade.

Note.—The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1018–0022. There are no new information collection requirements contained in this document that require Office of Management and Budget clearance. In accordance with Executive Order No. 12630, the Service has determined that the proposed rule has no potential takings implications for private property as defined in the Executive Order.

An environmental assessment on the listing of the African elelphant as a threatened species and the promulgation of special rules was prepared by the Service in 1978. The assessment was the basis for a decision that the listing and the special rules were not major federal actions which would significantly affect the human environment within the meaning of the National Environmental Policy Act of 1969. This document is considered an amendment to an approved action having no potential for causing substantial environmental impact, and thus qualifies as a categorical exclusion from National Environmental Policy Act requirements under 516 DM 6, Appendix 1, Section 1.4(A)(1).

**Author**

The principal author of this proposed rule is Senior Special Agent Michael Sutton, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

**List of Subjects**

*50 CFR Part 14*

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

*50 CFR Part 17*

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulation Promulgation**

For the reasons set forth in the preamble, Part 14, Subchapter B or Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 is revised to read as follows:

**Authority:** 18 U.S.C. 42; 16 U.S.C. 3371–3378; 16 U.S.C. 1538(d)–(f); 16 U.S.C. 1382; 16 U.S.C. 704, 712; 31 U.S.C. 483(a); 16 U.S.C. 4201–4245, unless otherwise noted.

2. Section 14.91 is amended by adding paragraph (c)(7) to read as follows:

**§ 14.91 License requirement.**

* * * * *

(c) * * *

(7) Any person who engages in the business of importing or exporting African elephant ivory.

3. Section 14.92 is amended by revising paragraph (b)(6) to read as follows:

**§ 14.92 Exceptions to license requirement.**

* * * * *

(b) * * *

(6) Any person if the value (as declared on the Declaration for Importation of Fish or Wildlife (Form 3–177)) of the wildlife that person imports and exports during a year totals less than $25,000: *Provided,* this paragraph shall not apply to persons engaged in the business of importing or exporting African elephant ivory.

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for Part 17 is revised to read as follows:

**Authority:** 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245.

**§ 17.3 [Amended]**

2. Section 17.3 is amended to add a new definition in alphabetical order as follows:

"CITES" means the same as "Convention".

**§ 17.40 [Amended]**

3. Section 17.40(e) is revised to read as follows:

* * * * *

(e) *African elephant (Loxodonta africana)*—(1) *Scope.* The regulations of this paragraph (e) apply only to the import and export of raw and worked African elephant ivory. However, the import and export of African elephants, including live and dead animals, offspring, ivory, and all other parts and derivates are also subject to Parts 14 and 23 of this subchapter.

(2) *Definitions.* For purposes of this paragraph (e):

"CITES Ivory Control System" means the ivory quota and marking system establishes by CITES to curtail illegal trade in African elephant ivory, specifically, the procedures established in the Resolutions designated Conf. 3.12, 5.12, and 6.12 through 6.16 adopted by the 3rd, 5th, and 6th Conferences of the parties to the Convention. Copies may be obtained from the CITES Secretariat, 6 Rue du Maupas, Case Postale 78, CH–1000 Lausanne 9, Switzerland. Copies may also be obtained by writing the Director, U.S. Fish and Wildlife Service, Office of Management Authority, Washington, DC 20240.

"Intermediary country" means a country that exports raw or worked ivory that does not originate in that country.

"Ivory producing country" means any African country within which is located any part of the range of a population of African elephants.

"Ivory quota" means a quota submitted by an ivory producing country to the CITES Secretariat in accordance with the CITES Ivory Control System.

"Personal effects" means articles which are not intended for sale and are part of a shipment of the household effects of a person who is moving his or her residence to or from the United States, or are included in personal accompanying baggage.

"Raw ivory" means any African elephant tusk, and any piece thereof, the surface of which, polished or unpolished, is unaltered or minimally carved.

"United States" means the 50 States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

"Worked ivory" means any African elephant tusk, and any piece thereof, which is not raw ivory.

(3) *Ivory Import Moratoria.* The Director may, in accordance with this paragraph, establish or remove a moratorium on the import of raw and worked ivory from any country. In determining whether or not to impose or remove a moratorium on ivory imports, the Director may consult with the country involved, the African Elephant and Rhino Specialist Group of the International Union for the Conservation of Nature, Species Survival Commission, the CITES Secretariat, the CITES African Elephant

Working Group, and other individuals and organizations having expertise regarding the African elephant.

(i) *Ivory Producing Countries*—(A) *Review and Determination.* The Director will review the elephant conservation program of each ivory producing country and, not later than October 8, 1988, will issue and publish in the **Federal Register** a determination of whether or not the country meets the following criteria:

(*1*) The country is a party to CITES and adheres to the CITES Ivory Control System.

(*2*) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the following factors:

(*i*) The amount of available elephant habitat, its condition and carrying capacity;

(*ii*) The population status of elephants in the country, including trends and population estimates;

(*iii*) The annual reproduction and mortality of elephants in the country, including information on the total harvest of the species and the distribution of the harvest;

(*iv*) The current wildlife management programs applied to elephants; and

(*v*) The effects, if any, of adjacent countries' elephant conservation programs on resident elephant populations.

(*3*) The taking of elephants in the country is effectively controlled and monitored.

(*4*) The country's ivory export quota is determined on the basis of information referred to in paragraph (2) above and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(*5*) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

(B) *Delay in issuing determination.* If the Director finds, on or before October 9, 1989, that there is insufficient information upon which to make the determination under paragraph (A), the Director may delay issuing the determination until no later than December 31, 1989. The Director will issue and publish in the **Federal Register** at the time of the finding a statement explaining the reasons for any such delay.

(C) *Establishment of moratoria.* The Director shall establish a moratorium on the importation of raw and worked ivory from an ivory producing country immediately upon making a determination that the country does not meet all the criteria set forth above. With regard to any ivory producing country for which the Director has insufficient information to make a determination pursuant to this paragraph, the Director will establish a moratorium on the importation of raw and worked ivory from such country not later than January 1, 1990, unless, based on new information, the Director concludes before that date that the country meets all of the criteria set forth above. The Director shall publish notice of the establishment of moratoria in the **Federal Register**.

(ii) *Intermediary countries.* The Director shall establish a moratorium on the importation of ivory from an intermediary country immediately upon making a determination that the intermediary country:

(A) Is not a party to CITES;

(B) Does not adhere to the CITES Ivory Control System;

(C) Imports raw ivory from a country that is not an ivory producing country;

(D) Imports raw or worked ivory from a country that is not a party to CITES;

(E) Imports raw or worked ivory originating in an ivory producing country that was taken or exported in violation of the laws of that ivory producing country;

(F) Substantially increases its imports of raw or worked ivory from a country that is subject to a moratorium under this paragraph during the first 3 months of that moratorium; or

(G) Imports raw or worked ivory from a country that is subject to a moratorium under this paragraph after the first three months of that moratorium, unless the ivory is imported by vessel during the first 6 months of that moratorium and is accompanied by shipping documents which show that it was exported before the establishment of the moratorium.

(iii) *Suspension.* The Director will suspend a moratorium established under this paragraph if, after notice and public comment, the Director determines that the reasons for establishing the moratorium no longer exist. The Director shall publish notice of the suspension of moratoria in the **Federal Register**.

(iv) *Petition.* Any person may at any time submit a petition in writing requesting that the Director establish or suspend a moratorium under this paragraph. Such a petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition. The Director shall publish a notice of receipt of a petition in the **Federal Register** and shall provide an opportunity for public comment on the petition. The Director shall rule on such petition not later than 90 days after the close of the public comment period: *Provided,* That if a petition is received that contains evidence which would sustain the immediate establishment of a moratorium, the Director shall impose a moratorium without delay as provided in paragraphs (i)(C) and (ii).

(v) *Confiscated ivory.* Trade in raw or worked ivory that is confiscated by an ivory producing or intermediary country and is disposed of pursuant to the CITES Ivory Control System shall not be the sole cause for the establishment of a moratorium under this paragraph: *Provided,* That this paragraph shall apply only if all proceeds from the disposal of the confiscated ivory are used solely to enhance wildlife conservation programs or the conservation purposes of CITES. Confiscated ivory must be disposed of by the government in an open and public manner that includes safeguards to prevent persons involved in elephant poaching and the illegal trade in ivory from acquiring confiscated ivory at auction or receiving any of the proceeds from its sale. The Service shall use all authorized means to collect sufficient information to verify the terms and conditions under which each sale of confiscated ivory takes place and the manner in which the proceeds are allocated, prior to authorizing the importation of ivory stemming from such a sale. With respect to any country that is not a party to CITES at the time of such confiscation, this paragraph shall not apply until the country develops appropriate measures to assure that persons with a history of illegal dealings in ivory do not benefit from the disposal of confiscated ivory.

(4) *Import of raw ivory.* It is unlawful for any person to import any raw ivory unless each of the following criteria is met:

(i) The raw ivory was exported directly to the United States from an ivory-producing country that is not subject to an ivory import moratorium: *Provided,* That individuals may import sport-hunted elephant trophies that they have legally taken in any ivory producing country for which notice of the establishment of a CITES ivory export quota for the year of export has been published in the **Federal Register**.

(ii) The raw ivory was exported in compliance with the CITES Ivory Control System and the laws of the exporting country, and is properly marked and accompanied by a valid export permit issued in accordance with the CITES Ivory Control System.

(5) *Import of worked ivory.* It is unlawful for any person to import any worked ivory unless:

(i) It is imported directly from a country which is not subject to an ivory import moratorium; and

(ii) Except for personal effects, the worked ivory is accompanied by a valid CITES export permit.

(6) *Export.* It is unlawful for any person to export any raw ivory from the United States for any purpose. Worked ivory may be exported only in accordance with a permit issued by the Office of Management Authority as required by Part 23 of this subchapter.

Date: March 9, 1989.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89-10795 Filed 5-4-89; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 54, No. 86
Friday, May 5, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Draft Supplement to the Final Environmental Impact Statement for the Regional Guide for the South

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplement to a final environmental impact statement.

**SUMMARY:** The Forest Service will prepare a draft and final supplement to the final environmental impact statement for the Regional Guide for the Southern Region field in June 1984. The supplement is being prepared for a proposed action to develop standards and guidelines for managing the Red-cockaded Woodpecker (RCW) habitat in the Southern Region in light of the recent documented decline in the RCW population and will result in an amendment to the Regional Guide. The supplement and amendment will be prepared in compliance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act. The agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

**DATE:** Comments related to scope of the analysis should be received by July 3, 1989, to ensure timely consideration.

**ADDRESSES:** Submit written comments and suggestions related to the scope of the analysis, and requests to be included on the mailing list for the supplement, to the RCW EIS Team Leader, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about the proposed action and supplement to David P. Smith, 1720 Peachtree Road, NW., Atlanta, Georgia 30367. Phone No. (404) 347–4338.

**SUPPLEMENTARY INFORMATION:** Pursuant to the National Forest System Land and Resource Management Planning regulations (36 CFR 219), a Regional Guide for the Southern Region was issued in June 1984, which provided Regional standards and guidelines to facilitate land and resource management planning for the National Forests within the Southern Region of the National Forest System. The Regional Guide did not include any specific direction for management of the Red-cockaded Woodpecker (RCW) habitat. Specific direction for management of RCW was issued in the Wildlife Habitat Management Handbook (FSH 2609.23R). The RCW chapter in the Handbook was originally issued in 1975 and the most recent revision was completed in 1985. The Regional Guide incorporated by reference the Wildlife Habitat Management Handbook. Since that time, the Forest Service has completed an analysis of accumulated survey information. The data indicate most of our smaller populations are declining in the Southern Region. This evidence has prompted the need to review management practices to determine how best to halt the decline and promote the recovery of the species. A supplement to the final environmental impact statement for the Regional Guide is being prepared for a proposed action of develop standards and guidelines for managing the RWC habitat in the Southern Region and will result in an amendment to the Regional Guide. The standards and guidelines will be established to ensure that any action authorized, funded or carried out by the Forest Service is not likely to jeopardize the continued existence of the endangered RCW.

In an attempt to avoid foreclosing future options, on March 27 the Forest Service instituted a temporary "Policy on Cutting within ¾ mile of RCW Colonies on Existing Timber Sale Contracts" (Policy). This Policy covers populations with less than 250 colonies and is designed to protect the RCW and does not foreclose consideration of a reasonable range of recovery management possibilities in the supplement to the Regional Guide EIS. Copies of this Policy may be obtained from David P. Smith.

During the time the supplement is being prepared, there may be changes in the RCW management practices established in the temporary Policy. Such changes would be the "Interim RCW Guideline" referred to in the temporary Policy. Any such changes would be determined following full public participation and in compliance with the National Environmental Policy Act, the National Forest Management Act, and the Endangered Species Act. This would result in a written decision documented in either a Decision Memo, Decision Notice, or Record of Decision and would, therefore, be subject to appeal under Forest Service regulations at 36 CFR 217.

In preparing the supplement, the Forest Service will identify and consider a range of alternatives for the proposed RCW standards and guidelines. One of these will be no change in the direction in place at the time the analysis begins for the management of the RCW habitat (no action). Other alternatives will be developed that present different combinations of possible standards and guidelines for managing the RCW habitat. Alternatives might include such subjects as colony site management techniques, foraging habitat requirements, long-term habitat needs, appropriate silvicultural treatments, monitoring requirements, etc. Management for RCW may be tailored to specific population status and trends. For example, populations with a high risk of extirpation may be managed with a different management strategy than populations at or above recovery levels.

John E. Alcock, Regional Forester, Southern Region, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7).

The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft supplement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant or non-relevant issues.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

A scoping letter will be mailed, at a minimum, to those who were sent the final environmental impact statement for the Regional Guide and those who have expressed interest in management of the National Forests with RCW colonies. In addition, a press release will be issued to provide information to those not on the mailing list. Written requests to be included on the mailing list can be sent to the RCW EIS Team Leader at the address listed above.

Scoping meetings may be held. Interested and affected persons will be notified of the dates and locations prior to any meetings held.

The draft supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1991. At that time EPA will publish a notice of availability in the **Federal Register**.

The comment period on the draft supplement will be 90 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the RCW habitat in the Southern Region of the Forest Service participate at this time. To be most helpful, comments on the draft supplement should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1530.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental reviews of the proposal so that it is meaningful and alerts an agency to the reviewers' positions and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed and considered by the Forest Service in preparing the final supplement. The final supplement is scheduled to be completed by August 1991. In the final supplement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under the Forest Service appeal regulations at 36 CFR 217.

Date: April 28, 1989.

**Marvin C. Meier,**

*Deputy Regional Forester.*

[FR Doc. 89-10797 Filed 5-4-89; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

**[Docket No. 90253-9053]**

### Crude Oil Export Study

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Notice pertaining to public hearings on the Section 2424 Crude Oil Export Study.

**NOTICE:** On April 21, 1989, the Department of Commerce announced in the **Federal Register** public hearings on the Section 2424 Crude Oil Export Study. The public hearings were scheduled for May 11, 1989, in Houston, Texas, and May 12, 1989, in Long Beach, California. The Department has received no specific written requests for public participation in the hearing scheduled for Houston, Texas, on May 11, 1989. Consequently, the Department is announcing that the planned hearing in Houston is cancelled. However, the May 12 hearing in Long Beach, California will take place as scheduled. The hearing will be held at the Port of Long Beach, Board Room, 925 Harbor Plaza, Long Beach, California 90802. The hearing will commence at 8:30 a.m. and end at 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kritzer, Senior Energy Advisor, Office of Industrial Resource Administration, Room H-3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377-4060.

May 3, 1989.

**James M. LeMunyon,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 89-11021 Filed 5-4-89; 8:45 am]

BILLING CODE 3510-DT-M

**[Docket No. 90368-9068]**

### Foreign Availability Assessment, 2,4-Dichlorophenoxyacetic Acid (2,4-D) and Salts and Esters of 2,4-D

**AGENCY:** Office of Foreign Availability, Bureau of Export Administration, Commerce.

**ACTION:** Notice of termination of a foreign availability assessment.

Pursuant to sections 5(f) (3) and (9) of the Export Administration Act of 1979 (EAA), as amended by the Omnibus Trade and Competitiveness Act of 1988, the Office of Foreign Availability published a notice in the **Federal Register** on January 9, 1989 on the initiation of an assessment on 2,4-dichlorophenoxyacetic acid and its salts and esters. The assessment was initiated on October 31, 1988 based on a claim of foreign availability submitted to the office. However, the Omnibus Trade and Competitiveness Act of 1988 also amended the EAA in section 5(c)(6) to remove unilateral national security controls by February 23, 1989. The EAA, therefore superseded the foreign availability assessment by removing the unilateral export controls on 2,4-D as well as salts and esters of 2,4-D as of February 23, 1989 as published in the **Federal Register** on February 28, 1989. As such, the foreign availability assessment, which was based on an industry submission and initiated on October 31, 1988, has been terminated.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jo-Anne A. Jackson, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

Dated: April 24, 1989.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 89-10933 Filed 5-3-89; 11:11 am]

BILLING CODE 3510-DT-M

**International Trade Administration**

**[A-588-811]**

## Initiation of Antidumping Duty Investigation: Drafting Machines and Parts Thereof From Japan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of drafting machines and parts thereof (drafting machines) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of drafting machines materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 22, 1989. If that determination is affirmative, we will make a preliminary determination on or before September 14, 1989.

**EFFECTIVE DATE:** May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Steven Lim or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087 or (202) 377-5288, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On April 7, 1989, we received a petition filed in proper form by the Vemco Corporation on behalf of the domestic drafting machine industry. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of drafting machines from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

Petitioner has indicated that it has standing to file the petition and that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under our revised regulations, parties seeking exclusion are required to submit their requests within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14 (54 FR 12773, March 28, 1989).

### United States Price and Foreign Market Value

Petitioner's estimate of United States price (USP) is based on the list prices charged by the U.S. sales subsidiary of Mutoh Industries Ltd. (Mutoh) and list prices charged by U.S. wholesalers, less estimated sales discounts. Additional adjustments were made, where appropriate, for U.S. duty, ocean freight, containerization, U.S. inland freight, insurance, U.S. warehousing, U.S. marketing, and differences in merchandise. Petitioner's estimate of foreign market value (FMV) is based on Mutoh's list prices in Japan, less an estimated sales discount. Based on a comparison of FMV to USP, petitioner alleges dumping margins ranging from 107 to 144 percent.

However, because certain adjustments to USP and FMV were insufficiently substantiated, the Department has recalculated these prices. The Department's estimate of USP is based on the list price of Mutoh's U.S. sales subsidiary, increased by four percent to account for probable price inflation, less sales discounts and U.S. duty. The Department's estimate of FMV is based on Mutoh's list prices in Japan, less sales discounts and an adjustment for differences in merchandise, where applicable. Based on a comparison of FMV to USP as estimated by the Department, the petition alleges an average dumping margin of 73 percent.

### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on drafting machines from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of drafting machines from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 14, 1989.

### Scope of Investigation

The United States had developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS items 9017.10.0000 and 9017.90.0000.

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be set and read and lines to be drawn at this angle. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps, and scales are not subject to this investigation.

### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

### Preliminary Determination by ITC

The ITC will determine by May 22, 1989, whether there is a reasonable indication that imports of drafting machines from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

April 27, 1989.

**Joseph Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 89-10753 Filed 5-4-89; 8:45 am]
BILLING CODE 3510-DS-M

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**[C-351-802]**

## Steel Wheels From Brazil; Amendment to Final Affirmative Countervailing Duty Determination

**AGENCY:** International Trade Administration/Import Administration/ Department of Commerce.

**ACTION:** Notice of amendment to final affirmative countervailing duty determination.

**SUMMARY:** On April 18, 1989, the Department of Commerce published the final affirmative countervailing duty determination on steel wheels from Brazil. After publication of our final determination, we received comments from petitioner alleging errors. We have corrected the ministerial errors and, accordingly are now amending the scope of that determination to include custom steel wheels.

**EFFECTIVE DATE:** May 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 18, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 15523) its final affirmative countervailing duty determination on steel wheels from Brazil. After publication of our final determination we received comments from petitioner alleging errors of fact.

Section 1333 of the Omnibus Trade and Competitiveness Act of 1988, which amends section 735 of the Tariff Act of 1930, authorizes Commerce to correct ministerial errors in final determinations.

### Ministerial Error

We corrected the following ministerial error:

In the final determination the Department stated that * * * the petitioner has explicitly indicated that it did not wish to include custom wheels in the scope of the order (October 7, 1988 letter). This statement, which was the sole basis for excluding custom wheels, was incorrect. In fact, the petitioner later stated during the course of the investigation that "custom wheels are a kind of steel wheel which is within the class or kind of merchandise" (October 21, 1988 letter). Therefore, our decision to exclude custom wheels was based on a mistake of fact. We have now revised our determination to take into account the correct facts.

The Department finds no error in its final determination to exclude rims sold as distinct articles of commerce from the scope of the investigation. We continue to maintain that the record demonstrates that petitioner's primary concern is with circumvention of an order through shipment of rims for which section 781 of the Omnibus Trade and Competitiveness Act of 1988 provides sufficient remedies.

### Amended Scope of Investigation

We have amended the scope of the investigation as follows:

The products covered by this investigation are steel wheels, assembled or unassembled, consisting of both a disc and a rim, designed to be mounted with both tube type and tubeless pneumatic tires, in wheel diameter sizes ranging from 13.0 inches to 16.5 inches, inclusive, and generally for use on passenger automobiles, light trucks and other vehicles.

**Michael J. Coursey,**

*Acting Assistant Secretary for Import Administration.*

Dated: April 27, 1989.

[FR Doc. 89-10754 Filed 5-4-89; 8:45 am]
BILLING CODE 3510-DS-M

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**[Application No. 89-00002]**

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Custom Business Solutions, Ltd. (CBSL). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Certified Conduct

*Export Trade*

*Products and Services.* All products and services.

*Export Trade Facilitation Services (as they relate to the Export of Products and/or Services).* Acting as distributor or broker; conducting market research; and conducting studies to determine the ability of Suppliers to provide Products and/or Services to certain foreign buyers.

*Export Markets.* The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Members (in addition to applicant).* Jerry McSpadden.

*Export Trade Activities and Methods of Operation.* CBSL may:

1. Provide Export Trade Facilitation Services to U.S. Suppliers, and

2. Enter into exclusive agreements with U.S. Suppliers to furnish those Suppliers' Products and/or Services to foreign buyers.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 27, 1989

**Thomas H. Stillman,**

*Director, Office of Export Trading, Company Affairs.*

[FR Doc. 89-10755 Filed 5-4-89; 8:45 am]

BILLING CODE 3510-DR-M

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**[Application No. 89-00001]**

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to Illinois World Trade Center Association, including the Illinois World Trade Center Association doing business as EXILL Trading Company (hereinafter sometimes collectively referred to as "EXILL Trading Company"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

*Products and Services.* Products and Services to be exported include all products and services.

*Export Trade Facilitation Services (as they relate to the export of Products and Services).* Consulting, international market research, advertising, marketing, sales of goods and services, insurance, product research and design, legal assistance, transportation, trade documentation and freight forwarding, communication and processing of foreign orders, warehousing, foreign exchange, financing, and taking title to goods.

*Export Markets.* The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation.* EXILL Trading Company may:

1. Enter into agreements with its Members to act as an Export Intermediary. These agreements may include any of the following provisions:

a. Each Member independently will provide EXILL Trading Company with an estimate of what quantities of Products and Services it will make available for export through EXILL Trading Company;

b. EXILL Trading Company will agree to purchase (for resale in Export Markets) Products and Services from its Members and, when necessary to complete product-line requests, from non-member Suppliers; and

c. EXILL Trading Company will market and sell the Products and Services, either directly or through other Export Intermediaries, at such prices and on such terms as EXILL Trading Company shall determine.

2. Purchase, and determine the price of purchase for, Products and Services from its Members and non-member Suppliers for resale by EXILL Trading Company in Export Markets.

3. Enter into exclusive or nonexclusive agreements with other Export Intermediaries for the sale of Products and Services in Export Markets. In each exclusive agreement, EXILL Trading Company may agree not to sell Products and Services in Export Markets except through the Export Intermediary and said Export Intermediary may agree not to represent other Suppliers of Products and Services.

4. Deliver, discuss, or otherwise exchange with one or more Members, in meetings or by other means:

a. Information that is already generally available to a particular trade or public;

b. Information about Export Markets, including sales and marketing efforts; activities and opportunities for sales; selling strategies; pricing; projected demand for Products and Services; customary terms of sales; the types and prices of Products and Services available from competitors for sale in particular Export Markets; and customer specifications for Products and Sevices;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products and Services available from Members for export;

d. Information about terms and conditions of contracts of sale in Export Markets to be considered and/or bid on by EXILL Trading Company and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales of Products and Services in Export Markets; and

h. Information about EXILL Trading Company's or its Members' export operations, including without limitation sales and distribution networks established by EXILL Trading Company or its Members in Export Markets, and prior export sales by Members (including export prices).

5. Enter into agreements with customers in Export Markets wherein EXILL Trading Company may agree in each case to sell Products and Services in the Export Markets only to such customers, and/or such customers may agree to purchase Products and Services only from EXILL Trading Company.

6. Engage with Members in joint bidding, selling, and servicing arrangements for Export Markets and in allocation among Members of sales resulting from such arrangements.

*Definitions*

For purposes of the Certificate:

1. "Members" means those members of the Illinois World Trade Center Association, within the meaning of the Association's by-laws, that become "members" protected by this Certificate of Review, within the meaning of 15 CFR 325.2(1), through amendment of this Certificate.

2. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker for the sale of Products or Services to Export Markets, or who perform similar functions, including providing or arranging for the provisions of Export Trade Facilitation Services, in connection with promoting, arranging for, and carrying out agreements relating to the sale of Products and Services in Export Markets.

3. "Supplier" means a person who produces, provides, or sells a Product or Service.

*Terms and Conditions of Certificate*

(a) In engaging in Export Trade Activities and Methods of Operation, neither EXILL Trading Company nor any Member shall intentionally disclose, directly or indirectly, to any other Member or Supplier any information about its or any other Member's or Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (e.g., price, time required to fill an order, etc.) of an actual or potential bona fide sale for export and the disclosure is limited to the prospective purchaser.

(b) EXILL Trading Company and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 28, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading, Company Affairs.*

[FR Doc. 89-10756 Filed 5-4-89; 8:45 am]

BILLING CODE 3510-DR-M

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**[Application No. 87-3A004]**

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration of Commerce.

**ACTION:** Notice of issuance of an amended export trade certificate of review, application No. 87-3A004.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Stillman, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### Description of Amended Certificate

Export Trade Certificate of Review No. 87-00004 was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

Paragraph 1 of the "Export Trade Activities and Methods of Operation" in NMTBA's Export Trade Certificate of Review, as previously amended, has been amended to include the following new subparagraph (j) to permit NMTBA and/or one or more of its Members to:

j. establish and operate jointly owned subsidiaries or other joint venture entities owned exclusively by Members for the purposes of engaging in the Export Trade Activities and Methods of Operation herein other than the licensing of associated Technology Rights pursuant to subparagraph (g).

Subparagraph (g) of paragraph 1, which remains unchanged, reads as follows:

g. license associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such license shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NMTBA or any other Member;

In addition, a conforming amendment has been made to the "Protection Provided by the Certificate" paragraph. That paragraph now reads as follows:

This Certificate protects NMTBA, its Members and their subsidiaries, their joint subsidiaries and joint ventures referenced above, and their directors, officers, and employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

**EFFECTIVE DATE:** January 27, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: April 26, 1989.

**Thomas H. Stillman,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 89-10757 Filed 5-4-89; 8:45 am]

BILLING CODE 3510-DR-M

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## National Telecommunications and Information Administration

## Frequency Management Advisory Council; Recharter

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of Recharter for the Frequency Management Advisory Council

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and General Services Administration (GSA)

Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Frequency Management Advisory Council is in the public interest in connection with the performance of duties imposed on the Department by law. Effective April 28, 1989, the Frequency Management Advisory Council has been rechartered.

The Council was first established on July 19, 1965. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until that office was merged by Executive Order 12046 of March 27, 1978, into the Department of Commerce, National Telecommunications and Information Administration. Its current charter terminates on April 28, 1991.

In reviewing the need for the Council, the Secretary has reaffirmed its original purpose of providing advice on radiofrequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. Research indicates that the Council's function cannot be accomplished by any organizational element or other committee of the Department.

The Council shall continue with a balanced representation of 15 members, chaired by the Assistant Secretary of Commerce for Communications and Information or designee, and will operate in compliance with the provision of the Federal Advisory Committee Act.

Copies of the Council's renewed Charter has been filed with appropriate committees of Congress and with the Library of Congress.

**FOR FURTHER INFORMATION CONTACT:** Inquiries or comments may be addressed to the Executive Secretary, Frequency Management Advisory Council, Mr. Michael W. Allen, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4099, Washington, DC 20230; telephone: (202) 377–0805, or Jan Jivatode, the Department Committee Management Analyst, telephone: (202) 377–3271.

Dated: April 28, 1989.

**Michael W. Allen,**

*Executive Secretary, Frequency Management Advisory Council, National Telecommunications and Information Administration.*

[FR Doc. 80–10856 Filed 5–4–89; 8:45 am]

BILLING CODE 3510–01–M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1989 Additions

**AGENCY:** Committee for Purchase from the Blind and other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

**EFFECTIVE DATE:** June 5, 1989.

**ADDRESS:** Committee for Purchases from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On December 23, 1988 and March 10, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (53 FR 51872 and 54 FR 10177) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

*Commodity* Folder, File, 7530–00–985–7097.

*Services* Food Service Attendant, Homestead Air Force Base, Florida. Janitorial/Custodial, Building 1019, Marine Corps Combat, Development Command, Quantico, Virginia.

**Harold G. Fishcher,**

*Acting Executive Director.*

[FR Doc. 89–10862 Filed 5–4–89; 8:45 am]

BILLING CODE 6820–33–M

### Procurement List 1989 Proposed Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** June 5, 1989.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite, 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

*Commodities*

Strap Assembly
4935–00–784–0141
Bandage, Gauze, Elastic
6510–00–913–7906
Sponge, Surgical, Gauze, Compressed
6510–00–926–9082

*Services*

Assembly, Kit Camouflage Support System

1080–00–179–6025
Janitorial/Custodial,
Federal Building, 115 South Denver Street, Henry R. Koen Federal Building, W. Main & Large Street, Russellville, Arkansas.
Janitorial/Custodial, U.S. Army Reserve Center, 360 West California Avenue, Memphis, Tennessee.

Harold G. Fischer,
*Acting Executive Director.*

[FR Doc. 89–10863 Filed 5–4–89; 8:45 am]
BILLING CODE 6820–33–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Intent To Prepare Environmental Impact Statement (EIS), Proposed 9th Infantry Division (Motorized) (9ID (MTZ)) Conversion, Fort Lewis, WA

**AGENCY:** Department of the Army, Department of Defense.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed conversion of the 9th ID (MTZ) at Fort Lewis, Washington.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the U.S. Army will prepare an EIS on the proposed conversion of the 9th ID (MTZ) from a structure consisting of a mix of mechanized infantry, armor, and motorized infantry maneuver units from both the Active and Reserve Components, to a standard mechanized infantry structure, (5 Armor Battalions and 5 Mech Battalions), in order to significantly improve the warfighting capabilities of the division.

**SUPPLEMENTARY INFORMATION:** The proposed action includes conversion of the Active Army artillery battalions from a towed to a self-propelled (tracked) structure, and equipment and structure changes to other divisional combat support and combat service support units. The proposed action would result in a decrease (approx 900) in the number of wheeled vehicles, an increase (approx 820) in the number of tracked vehicles, and an increase (approx 982) in the number of Active Army military personnel at Fort Lewis. This EIS will address the impact of this proposal on both Fort Lewis and the Yakima Firing Center. This EIS will not rely on previous EIS findings and recommendations, but rather will establish a new baseline for current operations, for an accurate assessment of the impacts. The following alternatives have been developed; they may be modified or new alternatives developed as a result of scoping and the impact analysis.

a. No action.

b. Partial conversion to a mechanized structure by retaining three Active Army motorized infantry battalions and converting the other divisional Active Army units to a standard mechanized infantry force structure mix.

c. Convert the 9ID (MTZ) to a mechanized division (Preferred alternative).

d. Convert the 9ID (MTZ) to an armored division. The proposal would potentially result in significant impacts on soils, vegetation, wildlife habitat, air and water quality. An increase in noise level may also occur.

e. Convert the 9ID (MTZ) to a Light Infantry Division.

Individuals, organizations and governmental agencies are encouraged to participate in the EIS process. This process will assist the U.S. Army in indentifying potential impacts to the environment resulting from the proposed conversion of the division and other alternatives. The draft EIS is expected to be available to the public on or about Fall, 1989.

Date, time and place of the public meeting(s) will be announced at a later date. Notification of interested parties will be by means of letter, public announcement and news release.

A copy of the DEIS or comments can be obtained by writing or contacting Mr. George Polich, Headquarters, I Corps and Fort Lewis, Public Affairs and Liaison Office (AFZH–PO), Fort Lewis, Washington 98433–5000. Telephone calls may be placed to (206) 967–2662.

Dated: April 28, 1989.

Lewis D. Walker,
*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I&L).*

[FR Doc. 89–10816 Filed 5–4–89; 8:45 am]
BILLING CODE 3710–08–M

## DEPARTMENT OF ENERGY

### Financial Assistant Award; Intent to Award Grant to the Instatherm Company

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of unsolicited financial assistance award.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15449 to Instatherm Company to assist in the development of "Fuel Savings in the Heavy Trucking Industry Through Cool Storage."

*Scope:* This grant will aid in providing funding for a well-integrated plan to test engineering and production prototype of the applicant's cool storage technology.

The purpose of this project is to store excess cold air from the truck's air conditioner, that is produced when the truck is running, in a phase-change gas hydrate (clathate). The anticipated objective it to test an engineering prototype under actual use conditions and to design, build and bench test a production prototype. The patent design estimates energy savings of 714,000 barrels of crude oil annually.

*Eligibility:* Based on receipt of an unsolicited application, eligibility of this award is being limited to Instatherm Company, a private company with high qualifications in this specialized field of technology. The inventor and president for Instatherm Company, Mr. Peter Carr, holds 44 patents, including the one for this technology. It has been determined that this project has high technical merit, representing an innovative and novel idea which has a strong possibility of allowing for future reductions in the nations energy consumption.

The term of this grant shall be two years from the effective date of award.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, ATTN: Lisa Tillman, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,
*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 89–10868 Filed 5–4–89; 8:45 am]
BILLING CODE 6450–01–M

### Morgantown Energy Technology Center; Grant; Financial Assistance Award to Pennsylvania Electric Co.

**AGENCY:** Morgantown Energy Technology Center, Department of Energy (DOE).

**ACTION:** Notice of acceptance of a non-competitive financial assistance application for grant award.

**SUMMARY:** Based upon a determination made pursuant to 10 CFR 600.7(b)(2) the DOE, Morgantown Energy Technology Center gives notice of its plans to award an 8-month grant to Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA 15907, in the amount of $130,630. The grantee intends to cost-share $15,572 of the project. The pending award is based on an unsolicited application entitled "integrated Mild

Gasification Processing at the Homer City Electric Power Generating Station Site." The project will investigate the feasibility of applying mild gasification technology for processig -100 mesh coal of 30 weight percent moisture at an electric utility site. This study, accessing the integration of DOE developed mild gasification plants into existing coal fired boiler power generation plants to process fine coal, will establish a new understanding of potential cost/benefit tradeoffs. The use of fine coal fraction from a cleaning plant as feed to an integrated mild gasification process presents a unique approach to solving an industry problem while enhancing the economics of an emerging coal technology. Since the study will be performed by a potential end user of the technology, the results will be highly credible to the power generation community and will represent a significant step toward commercialization of mild gasification systems.

**FOR FURTHER INFORMATION CONTACT:** Laura E. Brandt, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4079, Procurement Request No. 21–89MC26047.000.

Dated: April 21, 1989.

**Louie L. Calaway,**

*Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.*

[FR Doc. 89–10869 Filed 5–4–89; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Changes to DOE Energy Information Reporting and Record-Keeping Requirements

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of changes to the inventory of energy information reporting and record-keeping requirements.

**SUMMARY:** The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are not included in these notices.

During the second quarter of fiscal year 1989 (January 1, 1989 through March 31, 1989), changes were made to the October 1, 1988 inventory of DOE information collections, which was published in the **Federal Register**, 53 FR 48287, (November 30, 1988). Changes during the first quarter were published in the **Federal Register**, 54 FR 6743, (February 14, 1989).

The second quarter changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by the DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. For revised information collections, a brief summary of the type of revision is noted. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

**FOR FURTHER INFORMATION CONTACT:** Etta Harris, EI–73, Energy Information Administration, Mail Stop 1H–023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2165.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI–231, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–8800.

**Authority:** Section 3506, Pub. L. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506.

Issued in Washington, DC, April 28, 1989.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

| DOE Number and Title | OMB Control Number | Expiration Date | CFR Citation |
|---|---|---|---|
| Energy Information Administration: | | | |
| None | | | |

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

| DOE Number and Title | OMB Control No. | Expiration Date | CFR Citation |
|---|---|---|---|
| Energy Information Administration: | | | |
| EIA–1: Weekly Coal Monitoring Report—General Industries and Blast Furnances (Standby) | 19050167 | 03/31/92 | |
| EIA–4: Weekly Coal Report—Coke Plants (Standby Form) | 19050167 | 03/31/92 | |
| EIA–20: Weekly Telephone Survey of Coal Burning Utilities (Standby Form) | 19050167 | 03/31/92 | |
| Federal Energy Regulatory Commission: | | | |
| FERC–16: Report of Gas Supply and Requirements | 19020025 | 06/30/89 | 18 CFR 260.12 |
| FERC–519 *: Electric Rates—Corporate Applications | 19020082 | 06/30/89 | 18 CFR 33 |
| FERC–531 *: Gas Producer Certificates: New Service/Amendments | 19020052 | 06/30/89 | 18 CFR 2.75; 154.91; 111; 157.23–.28, .40; 250.5, .10 |
| FERC–534 *: Application for Production-Related Costs: Producer Rates | 19020057 | 06/30/89 | 18 CFR 270.203, 271.1103–.1105 |
| FPC–14: Annual Report for Importers and Exporters of Natural Gas | 19020027 | 06/30/89 | 18 CFR 260.4 |
| Fossil Energy: | | | |
| FE–748: Enhanced Oil Recovery Annual Report | 19010291 | 06/30/89 | |

* Does not utilize a structured form.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

| DOE Number and Title | OMB Control No. | Expiration Date | CFR Citation |
|---|---|---|---|
| Federal Energy Regulatory Commission: EIA-714(1): Annual Electric Power System Report | 19020140 | 12/31/90 | 18 CFR 141.51 |

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

| DOE Number and Title | OMB Control No. | Discontinued Date | CFR Citation |
|---|---|---|---|
| Energy Information Administration: EIA-7A(SUPP): Coal Production Report (Supplement) (Standby Form) | 19050167 | 02/28/89 | |

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

| DOE Numbers as previously listed | Changes |
|---|---|
| Energy Information Administration: | |
| ETA-3,5,6,7A | Minor modifications to survey and extended through 12/31/92. |
| EIA-714 | Minor modifications to survey and extended through 12/31/90. |
| EIA-861 | Minor modifications to survey. |
| Economic Regulatory Administration: | |
| ERA-329R | Regulatory change. |
| Fossil Energy/Economic Regulatory Administration: | |
| FE-166 | Changed from ERA to FE: OMB number changed from 1903-0060 to 1901-0293. |
| FE-750R | Changed from ERA to FE: OMB number changed from 1903-0070 to 1901-0295. |
| FE-746R | Changed from ERA to FE: OMB number changed from 1903-0081 to 1901-0294. |
| FE-781R | Changed from EPA to FE: OMB number changed from 1903-0080 to 1901-0296. |

[FR Doc. 89-10872 Filed 5-4-89; 8:45 am]

BILLING CODE 6450-01-M

## Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under Section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before June 5, 1989.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

**FOR FURTHER INFORMATION CONTACT:** *For further information and copies of relevant materials contact:* Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2171.

**SUPPPLEMENTARY INFORMATION:** If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC 576
3. 1902-0004
4. Report by Certain Natural Gas Companies on Service Interruptions
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 16 respondents
10. 3 hours per response
11. 48 hours (total)
12. The information collected is required to give the Commission sufficient data to oversee pipeline safety and continuity of service.

**Authority:** sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 1, 1989.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 89-10873 Filed 5-4-89; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket Nos. CP89-1242-000, et al.]

## Colorado Interstate Gas Co. et al., Natural Gas Certificate Filings

April 28, 1989.

Take notice that the following filings have been made with the Commission:

[Docket No. CP89-1242-000]

### 1. Colorado Interstate Gas Co.

Take notice that on April 19, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1242-000 a request purusant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Helmerich and Payne, Inc. (Shipper), a producer, under CIG's blanket certificate issued in Docket No. CP86-589-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport on an interruptible basis up to 20,000 Mcf of natural gas on a peak day, 10,000 Mcf on an average day and 3.7 Bcf on an annual basis for the Shipper. It is stated that CIG would receive the gas for the Shipper's account at existing points on CIG's system in Kansas and would redeliver the subject gas less fuel gas and lost, for the account of Shipper in Moore County, Texas. It is explained that the transportation service commenced on March 4, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-2784-000.

*Comment date:* June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

[Docket No. CP88-269-004, Docket No. CP88-325-003, Docket No. CP88-346-004, Docket No. CP88-459-003.]

### 2. Alabama-Tennessee Natural Gas Co.

Take notice that on April 25, 1989, Alabama-Tennessee Natural Gas Company (A-T), Post Office Box 918, Florence, Alabama 35631, filed a petition in the captioned proceedings pursuant to section 7(c) of the Natural Gas Act and the Commission's Regulations to amend the limited-term certificates issued in Docket Nos. CP88-269-000, CP88-325-000, CP88-346-000, and CP88-459-000, to provide for an extension of authorized term and to amend the certificate issued in Docket No. CP88-346-000 to increase the maximum authorized transportation volumes, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

A-T indicates that the orders granting the limited-term certificates authorized A-t to transport volumes of natural gas on an interruptible basis for Tennessee River Pulp & Paper Company (Tennessee River) for use in the operation of its plant located in Counce, Tennessee (Docket No. CP88-269-000), for Amoco Chemical Company (Amoco) for use at its chemical plant in Morgan County, Alabama (Docket No. CP88-325-000, for Champion International Corporation (Champion) for use at its pulp and paper mill located north of the town of Courtland, Alabama (Docket No. CP88-346-000), and for North Alabama Gas District (NAGD) for resale to its customers (Docket No. CP88-459-000). A-T states that Tennessee River, Amoco, Champion and NAGD have requested that the term of the transportation services be extended for an additional year. A-T requests that the Commission amend the orders issuing the limited-term certificates to extend the authorized terms for one year from the current termination dates. A-T further requests that the maximum daily transportation quantity for Champion be increased from 12,000 dt equivalent of natural gas to 22,000 dt equivalent.

A-T is therefore requesting limited terms to be extended as follows:

Docket No. CP88-269-004 on July 5, 1990, Docket No. CP88-325-003 on September 15, 1990, Docket No. CP88-346-004 on July 7, 1990, Docket No. CP88-459-003 on August 11, 1990.

A/T proposes no other changes to the four certificates.

*Comment date:* May 19 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[Docket No. CP89-1248-000]

### 3. United Gas Pipe Line Co.

Take notice that on April 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1248-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Marathon Oil Company, a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport 151,583 MMbtu on a peak and average day and 55,327,810 MMbtu on an annual basis.

United further states that it has commenced service under the 120-day automatic authorization and reported such service in Docket No. ST89-2517, pursuant to § 284.223(a) of the Regulations.

*Comment date:* June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 4. Tennessee Gas Pipeline Co.

[Docket No. CP89-1257-000]

Take notice that on April 24, 1989, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77002, filed in Docket No. CP89-1257-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate metering facilities for four existing sales customers at five locations, under Tennessee's blanket certificate, issued in Docket No. CP82-413-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to install additional metering facilities for deliveries to (1) the City of Springfield in Robertson County, Tennessee; (2) the City of Morehead in Rowan County, Kentucky; (3) Delta Natural Gas Company in Madison and Garrard Counties, Kentucky; and (4) Pike Natural Gas Company in Jackson County, Ohio. It is stated that the metering facilities are required because of operational difficulties Tennessee has been experiencing at these delivery points. It is further stated that the existing metering facilities would continue to be used alongside the additional facilities proposed in order to more accurately measure deliveries. It is asserted that there would be no change in the volumes delivered at the delivery points specified above and that there would be no impact on Tennessee's peak-day and annual deliveries.

*Comment date:* June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

### 5. Texas Gas Transmission Corp.

[Docket No. CP89-1271-000]

Take notice that on April 25, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1271-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible

transportation service for Catamount Natural Gas, Inc. (Catamount), under the blanket certification issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated January 31, 1989, under its Rate Schedule IT, it proposes to transport up to 100,000 MMBtu per day equivalent of natural gas for Catamount. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "C" of the agreement. It is stated that the ultimate recipients of the gas are Armstar, W. R. Grace, and Baltimore Specialty Steel.

Texas Gas advises that service under § 284.223(a) commenced March 11, 1989, as reported in Docket No. ST89–2717. Texas Gas further advises that it would transport 25,000 MMBtu on an average day and 9,125,000 MMBtu annually.

*Comment date:* June 12, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filling a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–10782 Filed 5–4–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ES89–20–000]**

## The Detroit Edison Co.; Application

May 1, 1989.

Take notice that on April 20, 1989, The Detroit Edison Company filed an Application pursuant to section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1991, in an aggregate principal amount not to exceed $1.2 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–10783 Filed 5–4–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP89–1209–000]**

## Northern Natural Gas Co., Division of Enron Corp.; Request Under Blanket Authorization [1]

May 1, 1989.

Take notice that on April 14, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89–1209–000 a request pursuant to Northern's blanket authority granted on September 1, 1982, in Docket No. CP82–401–000 and §§ 157.205 and 157.212, of the Commission's Regulations (18 CFR 157.205 and 157.212) for authority to realign certain volumes and modify two existing delivery points for Midwest Gas, a Division of Iowa Public Service Company (Midwest), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern is proposing, at Midwest's request, to realign CD–1 firm sales service by reducing firm entitlements for five communities and increasing firm entitlements for five communities served by Midwest. Also, Northern is proposing to realign SS–1 firm sales service by reducing firm entitlements for one community and increasing firm entitlements for seven communities served by Midwest. To provide the requested realignment, Northern will make modifications to two existing delivery points located at Anoka No. 1A and HAM Lake No. 1, Minnesota. These modifications will consist of replacing the existing meters with larger capacity meters at both locations. The proposed realignment of entitlements will not affect the total level of firm sales service provided by Northern to Midwest under either Rate Schedule CD–1 or SS–1.

Any person or the Commission's staff

[1] Replaces Notice of Application, in this Docket, dated April 24, 1989.

may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-10784 Filed 5-4-89; 8:45 am]

BILLING CODE 6717-01-M

## Office of Fossil Energy

**[Docket No. FE C&E 89-09; Certification Notice—35]**

### Power Resources, Inc., Filing a Certification of Compliance; Coal Capability of New Electric Powerplants

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the SUPPLEMENTARY INFORMATION section below.

**SUPPLEMENTARY INFORMATION:** The following company has filed a self certification:

| Name | Date Received | Type of Facility | Megawatt Capacity | Location |
|---|---|---|---|---|
| Power Resources Inc., Houston, TX | 04-17-89 | Topping Cycle Cogen | 258.4* | Big Spring, TX |

* Notice of this certification previously appeared in the FEDERAL REGISTER on January 23, 1989, (54 FR 3111). That notice erroneously indicated that the megawatt capacity was 58.35 instead of 258.4 megawatts.

Amendments to the FUA on May 21, 1987, (Pub. L. 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on April 28, 1989.

**J. Allen Wampler,**

*Assistant Secretary, Fossil Energy.*

[FR Doc. 89-10870 Filed 5-4-89; 8:45 am]

BILLING CODE 6450-01-M

**[Docket No. FE C&E 89-10; Certification Notice-36]**

### Sterling Power Partners, L.P. et al.; Filing Certifications of Compliance; Coal Capability of New Electric Powerplants

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of filing.

**SUMMARY:** Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*), provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311(a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as to base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the Federal Register a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:** The following companies have filed self certifications:

| Name | Date received | Type of facility | Megawatt capacity | Location |
|---|---|---|---|---|
| Sterling Power Partners, L.P., New York, NY | 04-24-89 | Combined Cycle Cogen | 54 | Oneida County, NY. |
| Ocean State Power II, Boston, MA | 04-24-89 | Combined Cycle Cogen | 250 | Burrillville, RI. |

Amendments to the FUA on May 21, 1987, (Pub. L. 100–42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Issued in Washington, DC on May 1, 1989.

J. Allen Wampler,

*Assistant Secretary, Fossil Energy.*

[FR Doc. 89–10871 Filed 5–4–89; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3567–4]

### Environmental Impact Statements; Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of environmental impact statements Filed April 24, 1989 Through April 28, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890105, Draft, FHW, OH, KY US 62/68/Ohio River Bridge Construction, Mason County, KY to Brown County, OH, Funding, US Coast Guard Bridge Permit and COE Section 404 Permit, Mason Co., KY and Brown Co. OH, Due: June 23, 1989, Contact: Robert E. Johnson (502) 227–7321.

EIS No. 890106, DSuppl, IBR, UT, Diamond Fork Power System Project, Original Plan Reduction, Bonneville Unit, Central Utah Project, Approval and Funding, Utah and Wasatch Counties, UT, Due: June 29, 1989, Contact: Harold Sersland (801) 524–5580.

EIS No. 890107, Draft, USA, UT, Tooele Army Depot, On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Tooele County, UT, Due: June 20, 1989, Contact: Lewis Walker (202) 695–7824.

EIS No. 890108, Draft, COE, CA, Lower San Joaquin River and Tributaries Flood Control Plan and Channel Clearing and Snagging Project, Implementation and Modifications, Fresno, Merced, Stanislaus, Madera and San Joaquin Counties, CA, Due: June 19, 1989, Contact: Fred Walasavage (916) 551–1860.

EIS No. 890109, DSuppl, AFS, OK, AR, Ouachita National Forest, Amended Land and Resource Management Plan, Updated and Additional Information with emphasis on the Issue of Even-Age and Uneven-Age Management, Implementation, Garland, Logan, Hot Spring, Montgomery, Howard, Perry, Pike, Polk, Saline, Scott, Sebastian and Yell Cos., AR and Leflore and McCurtain Cos., OK, Due: August 3, 1989, Contact: Gary Pierson (501) 321–5202.

EIS No. 890110, Draft, AFS, CA, Alder Timber Sale Management Plan, Implementation, Middle Deer Creek Management Area, Almanor Ranger District, Lassen National Forest, Tehama County, CA, Due: June 30, 1989, Contact: Laurence Crabtree (916) 258–2141.

EIS No. 890111, Draft, AFS, CA, Polk Timber Sale Management Plan, Implementation, Lower Mill Creek, Middle Deer Creek and Lower Deer Creek Management Areas, Almanor Ranger District, Lassen National Forest, Tehama County, CA, Due: June 30, 1989, Contact: Laurence Crabtree (916) 258–2141.

EIS No. 890112, DSuppl, AFS, NC, TN, VA, Cherokee National Forest Land and Resource Management Plan, Alternative 7 Modification, Implementation, Carter, Cocke, Greene, Johnson, McMinn, Monroe, Polk, Sullivan, Unicoi and Washington Counties, TN; Washington County, VA and Ashe County, NC, Due: August 3, 1989, Contact: Donald L. Rollins (615) 476–9700.

EIS No. 890113, DSuppl, COE, WY, Sandstone Dam and Reservoir Construction, Municipal, Agricultural and Industrial Water Supply Project, Purpose and Need and Mitigation Plan Sections Revision, 404 Permit, Savery Creek, Carbon County, WY, Due: June 19, 1989, Contact: Richard D. Gorton (402) 221–4598.

EIS No. 890114, Draft, AFS, OR, Tepee Butte Fire Recovery Project, Implementation, August thru September 1988 Tepee Butte Fire Damage Recovery Land Management Plan, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, Wallowa County, OR, Due: June 19, 1989, Contact: Steven Howes (503) 523–9401.

Dated: May 2, 1989.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 89–10865 Filed 5–4–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3567–3]

### Proposed Administrative Settlement and Opportunity to Comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative settlement and opportunity for public comment.

**SUMMARY:** EPA is providing notice of a proposed administrative settlement for recovery of EPA's response and oversight costs pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986. Public comment is also solicited by this notice.

Under 42 U.S.C. 9606, EPA is authorized to enter into and to issue orders requiring, among other things, investigation and cleanup of facilities where hazardous substances have or may have been released. 42 U.S.C. 9607 provides that a party responsible for the release is liable for costs expended by the United States in its response to the problem. 42 U.S.C. 9622(h) provides EPA with authority to consider, compromise and settle a claim for costs incurred by the United States if the case has not been referred to the Department of Justice. This notice proposes a settlement to a claim by EPA against Technical Ordnance, Inc., pursuant to this settlement authority. Because this case is one in which the United States has incurred costs less than $500,000, EPA may compromise and settle the claim without the prior written approval of the Attorney General. The settlement of this case has not been referred to the Department of Justice.

In 1986, Technical Ordnance, Inc. owned an operation called Dela-Tek located in Coolidge, Arizona, which produced, primarily, ammunition and explosives. In November of 1986, EPA issued an administrative order to Technical Ordnance, pursuant to 42 U.S.C. 9606(a), requiring Technical Ordnance to carry out a cleanup of buried and improperly stored hazardous wastes at the facility. As an operator of the facility, EPA determined that Technical Ordnance was a responsible party for the cleanup pursuant to 42 U.S.C. 9607. When Technical Ordnance submitted a cleanup plan which did not adequately address the required cleanup, EPA mobilized its cleanup team and began the cleanup itself. Technical Ordnance subsequently produced an adequate cleanup plan, and EPA withdrew its cleanup team and allowed Technical Ordnance to complete the cleanup.

EPA spent $83,699.85 in cleanup operations and in overseeing Technical Ordnance's activities once they took over the cleanup effort. After negotiations with EPA, Technical Ordnance has agreed to reimburse EPA $74,500; with $14,500 payable immediately followed by 20 monthly payments of $3,000 each. EPA believes that the settlement is fair and in the public interest.

**EFFECTIVE DATE:** June 5, 1989. Comments will be considered if received before the effective date.

**ADDRESS:** Comments may be mailed to: Jeff Dhont, United States Environmental Protection Agency, 215 Fremont Street, T–4–4, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Jeff Dhont, (415) 974–0990.

Dated: April 26, 1989.

**Jeff Zelikson,**

*Director, Hazardous Waste Management Division.*

[FR Doc. 89–10846 Filed 5–4–89; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 1, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501–3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632–7513.

*OMB Number:* 3060–0398

*Title:* Sections 2.948, 15.117(g)(2), and 15.117(g)(3)—Equipment Authorization Measurement Standards

*Action:* New collection

*Respondents:* Businesses (including small businesses)

*Frequency of Response:* Recordkeeping requirement and on occasion reporting

*Estimated Annual Burden:* 400 responses; 20 recordkeepers; 9,350 hours; 22.26 hours average burden per response or recordkeeper

*Needs and Uses:* Information will be used by the Commission to ensure that data which accompanies all requests for equipment authorization is valid and that proper testing procedures were utilized. Data may also be used for investigating complaints of harmful interference or for verifying the manufacturer's compliance with the Commission's Rules.

*OMB Number:* 3060–0329

*Title:* Section 2.955, Equipment Authorization—Verification

*Action:* Revision

*Respondents:* Businesses (including small businesses)

*Frequency of Response:* Recording requirement

*Estimated Annual Burden:* 5,675 recordkeepers; 102,150 hours; 18 hours average burden per recordkeeper

*Needs and Uses:* Technical data is gathered and retained by the equipment manufacturer in order to verify compliance for each device operated under the applicable Rule part. Testing and required verification aids in controlling potential interference to radio communications and, if necessary, the data gathered may be used for investigating compliants of harmful interference, or for verifying the manufacturer's compliance with the Rules.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–10861 Filed 5–4–89; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.* 212–011213–007.

*Title:* Spain-Italy/Puerto Rico Island Pool Agreement.

*Parties:*

Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.

*Synopsis:* The proposed modification would limit the amount of overcarriage liability for the initial Pool Period.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary*

Dated: May 1, 1989.

[FR Doc. 89–10794 Filed 5–4–89; 8:45 am]

BILLING CODE 6730–01–M

### Fact Finding Investigation No. 16; Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

May 1, 1989.

By Order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing, or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. The Investigative Officer has now advised that in order to complete ongoing fact finding activities it is necessary to extend this investigation an additional year.

*Therefore, it is ordered,* That the Investigative Officer shall issue a final report of findings and recommendations to the Commission on or before April 14, 1990, such report to remain confidential unless and until the Commission rules otherwise.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89–10766 Filed 5–4–89; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Charles R. Gesme

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 1989.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Charles R. Gesme,* Hopkins, Minnesota; to acquire 100 percent of the voting shares of American National Agency, Inc., Nashwauk, Minneota, and thereby indirectly acquire 85 percent of the voting shares of The American National Bank of Nashwauk, Nashwauk, Minnesota.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jeffery N. Bradley,* Morrison, Colorado; to acquire an additional 9.62 percent of the voting shares of Evergreen Bancorporation, Evergreen, Colorado, for a total of 18.35 percent and thereby indirectly acquire Evergreen National Bank, Evergreen, Colorado.

2. *C.R. Cowherd,* Carrollton, Missouri; to acquire an additional 15 percent of the voting shares of Carroll County Bancshares, Inc., Carrollton, Missouri, for a total of 29 percent and thereby indirectly acquire The Carroll County Trust Company, Carrollton, Missouri.

Board of Governors of the Federal Reserve System, May 1, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-10799 Filed 5-4-89; 8:45 am]

BILLING CODE 6210-01-M

## National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested 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 May 26, 1989.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.,* Boyertown, Pennsylvania; to acquire up to 24.9 percent of the voting shares of Pennsylvania State Bank, Lemoyne, Pennsylvania, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBM Bancorp, Inc.,* Mendota, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Mendota, Mendota, Illinois.

2. *NBM Bancorp, Inc.,* Mendota, Illinois; to acquire 100 percent of the voting shares if I.V. Bancorp, Inc., Peru, Illinois, and thereby indirectly acquire First National Bank in Peru, Peru, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado,* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of South Boulder, National Association, Boulder, Colorado, and 100 percent of the voting shares of FirstBank of Beaver Creek, National Association, Unincorporated Eagle County, Colorado.

Board of Governors of the Federal Reserve System, May 1, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-10800 Filed 5-4-89; 8:45 am]

BILLING CODE 6210-01-M

## Woburn National Corp., et al.; Application To Engage De Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Woburn National Corporation,* Woburn, Massachusetts; to engage *de novo* in making commercial loans pursuant to section 225.25(b)(1)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

FR Doc. 89-10801 Filed 5-4-89; 8:45 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control**

**[Announcement 920]**

## Tuberculosis and Human Immunodeficiency Virus [HIV] Demonstration Projects

### Introduction

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1989 funds for cooperative agreements for Tuberculosis and Human Immunodeficiency Virus (HIV) Demonstration Projects for: (A) *New Diagnostic Tests:* develop and evaluate new diagnostic tests for tuberculosis in persons infected with HIV; (B) *Recommended Therapy Efficacy Studies:* determine the efficacy of current CDC/American Thoracic Society (ATS) recommended anti-tuberculosis drug regimens in the treatment of tuberculosis in persons with HIV infection; and (C) *Trial Preventive Therapy Efficacy Studies:* determine the efficacy of various regimens of tuberculosis preventive therapy and the risk of tuberculosis and AIDS among tuberculin positive persons during various stages of HIV infection (dually infected persons).

### Authority

This program is authorized by the Public Health Service Act: section 301(a) (42 U.S.C. 241(a)), as amended; and section 317(k) (42 U.S.C. 247b(a)). Regulations governing programs for preventive health services are codified at 42 CFR Part 51b. Subpart A contains general provisions relating to this program.

### Eligible Applicants

Eligible applicants for this program include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

In addition, eligible applicants must meet minimum requirements for the specified project areas as follows:

A. *New Diagnostic Tests:* Applicants will be limited to those with the expertise and facilities in laboratory diagnosis of infectious diseases since only they would have the necessary capabilities to develop and evaluate diagnostic tests.

B. *Recommended Therapy Efficacy Studies:* Due to the need to enroll sufficient patients to ensure statistical validity of results, applicants will be limited to those which treated at least 25 HIV-infected tuberculosis patients during 1987 and 1988.

C. *Trial Preventive Therapy Efficacy Studies:* Due to the need for an adequate study group of dually infected individuals, applicants will be limited to areas that are able to enroll at least 100 dually infected persons in a 12 month period.

### Availability of Funds

Approximately $1,970,000 is available in Fiscal Year 1989 to fund approximately 18 new cooperative agreements. It is expected that the average award will be $100,000, ranging from $50,000 to $240,000. It is expected that awards will begin on or about September 15, 1989, for a 12-month budget period within a 1 to 4 year project period. Funding estimates are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and the availability of funds.

A. *New Diagnostic Tests:* Approximately $510,000 is available to fund approximately 4 awards for a 12-month budget period within a 1–3 year project period.

B. *Recommended Therapy Efficacy Studies:* Approximately $500,000 is available to fund approximately 10 awards for a 12-month budget period within a 1–4 year project period.

C. *Trial Preventive Therapy Efficacy Studies:* Approximately $960,000 is available to fund approximately 4 awards for a 12-month budget period within a 1–3 year project period.

Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to support inpatient care or to supplant State or local health department funds available for tuberculosis control.

### Purpose

The purpose of this program is threefold:

A. *New Diagnostic Tests:* Develop and evaluate new diagnostic tests for tuberculosis in HIV-infected persons. Applications proposing to develop and evaluate rapid tests with high sensitivity and specificity are encouraged. These tests must be evaluated among HIV infected persons with and without tuberculosis and tuberculous infection during various stages of HIV infection. Test characteristics will be related to the tuberculin skin test reaction, as well as to clinical parameters.

B. *Recommended Therapy Efficacy Studies:* Determine the efficacy of current CDC/ATS recommended anti-tuberculosis drug regimens in the treatment of tuberculosis in HIV-infected persons. These projects will involve the prospective collection of demographic, clinical, and laboratory data from HIV infected persons who develop tuberculosis.

C. *Trial Preventive Therapy Efficacy Studies:* Determine the efficacy of tuberculosis preventive therapy and the risk of tuberculosis and AIDS among dually infected persons. These projects will assess the efficacy of various regimens of preventive therapy and the risk of tuberculosis and AIDS among tuberculin positive persons during various stages of HIV infection.

D. *The National Program goals are to:*

1. Develop rapid (i.e., 2 to 4 hours) and highly specific and sensitive (i.e., 95 percent or greater) diagnostic tests to determine which HIV infected persons are also infected with the tubercle bacillus;

2. Develop optimal chemotherapeutic regimens for treating tuberculosis patients who are infected with the HIV; and,

3. Prevent tuberculosis among dually infected persons by:

a. Assessing the impact of INH and other drugs in reducing tuberculosis morbidity and mortality among persons with, or at high risk of, HIV infection, and

b. Assessing the risk of developing tuberculosis in persons with dual infection and the influence of tuberculosis on the progression of HIV infection.

### Program Requirements

*A. Recipient Activities*

1. New Diagnostic Tests

a. Develop rapid new diagnostic tests for tuberculosis which are capable of specifically identifying persons infected with *Mycobacterium tuberculosis,* particularly when those persons are also infected with the HIV.

b. Develop and implement protocols to evaluate the sensitivity and specificity of the new diagnostic tests.

c. Develop and implement an evaluation plan to monitor the results.

d. Prepare and publish findings.

2. Recommended Therapy Efficacy Studies

Determine the efficacy of current CDC/ATS recommended anti-tuberculosis drug regimens in the treatment of tuberculosis in HIV-infected persons by:

a. Developing and implementing a protocol which will successfully assess

the efficacy of current CDC/ATS recommended chemotherapy regimens in the treatment of tuberculosis in HIV-infected persons. The protocol should adequately provide for monitoring of compliance and adverse reactions;

b. Developing and implementing an evaluation plan to monitor the effectiveness of the protocol; and,

c. Preparing and publishing results.

3. Trial Preventive Therapy Efficacy Studies

Determine the efficacy of tuberculosis preventive therapy and the risk of tuberculosis and AIDS among dually infected persons by:

a. Developing methods or strategies to successfully identify and administer tuberculosis preventive therapy to HIV-infected persons who are also infected with the tubercle bacillus. The strategies should be applicable to TB/HIV-infected persons anywhere in the United States and should include a description of the methods to be used to monitor for and insure compliance, assess toxicity, and follow patients for at least 2 years after completion of therapy;

b. Implementing the plan developed to provide preventive therapy to dually infected persons;

c. Developing and implementing an evaluation plan that measures the effectiveness of the trial preventive therapy regimens employed; and,

d. Preparing and publishing findings.

Each of the three above proposed projects involve HIV-infected patients. Those applicants which would have to provide HIV antibody testing to determine a person's HIV infection status are reminded of the need to provide pre- and post-test counseling and partner notification of HIV seropositive patients. Applicants are also reminded that State and local health departments have requirements regarding specific reportable diseases or conditions. Recipients of these funds are encouraged to conform to the requirements in their particular geographic location.

Applicants must include in their applications all relevant documentation which permits the use and reporting of the HIV antibody test for the purposes described in their proposal, as well as a carefuly described plan to assure the confidentiality of patient records and test results, and how this information will be handled.

*B. Centers for Disease Control Activities*

1. Collaborate and consult in the development and implementation of protocols.

2. Assist in data management and analysis.

3. Assist in the evaluation of program effectiveness.

4. Assist in the preparation and publication of results.

**Review and Evaluation Criteria**

Applications will be reviewed and evaluated on the following criteria:

*A. Project Specific Criteria*

1. New Diagnostic Tests

a. Performance of the laboratory during 1987 and 1988 in providing diagnostic services for tuberculosis patients with and without HIV infection.

b. The ability to obtain diagnostic specimens from HIV seropositive and seronegative persons who are (1) infected with the tubercle bacillus but do not have disease, (2) not infected with the tubercle bacillus (i.e., normal controls), and (3) confirmed as having disease due to *Mycobacterium tuberculosis* and/or other mycobacterial organisms. (The number of diagnostic specimens must be sufficient to ensure statistical validity. The actual number required will vary depending on the protocol design.)

c. Past performance of the applicant in developing and/or evaluating diagnostic tests.

d. Demonstrated expertise in immunology and/or molecular biology.

2. Recommended Therapy Efficacy Studies

a. The extent of the problem of tuberculosis and HIV infection in the applicant's State or city.

b. The number of patients with tuberculosis and HIV infection treated for tuberculosis at the applicant's institution within the past two years.

c. The ability of the applicant to monitor and treat tuberculosis patients who are HIV-infected, including non-compliant patients.

e. Trial Preventive Therapy Efficacy Studies

a. The extent of the problem of tuberculosis and HIV infection in the applicant's city or Stae, including the number of tuberculosis cases, the number of AIDS cases, the number of tuberculosis cases with AIDS/HIV infection, the estimated prevalence of HIV seropositivity in various population groups, and the estimated prevalence of tuberculin reactivity among AIDS risk groups.

b. The estimated number of dually infected person who can be identified and given tuberculosis preventive therapy.

c. The ability of the applicant to monitor and follow participants receiving preventive therapy, including methods for dealing with noncompliant patients.

*B. General Evaluation Criteria*

1. The extent to which short-term and long-term objectives are provided, and the extent to which they are realistic, measurable, time-phased, related to recipient activities, and are consistent with the National program goals for which funds are being made available.

2. The overall potential effectiveness of the applicant's proposed activities and methods for meeting the stated objectives. For clinical studies, this includes plans for insuring compliance and preventing tuberculosis in high risk groups.

3. The adequacy of plans to evaluate progress in implementing methods and in achieving objectives.

4. The inclusion of relevant documentation which permits the applicant to use the HIV antibody test and report the results, for the purposes described in the applicant's proposal.

5. The inclusion of detailed description of the applicant's plan for assuring confidentiality of patient records and test results, and an explanation of who such information will be handled.

In addition, consideration will be given to the extent to which the budget request is clearly justified and consistent with the intended use of funds.

**E.O. 12372 Review**

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Other Requirements**

Recipients must comply with the document titled: *Content of Aids-Related Written Materials, Pictorials, Audiovisuals, Questionnaries, Survey Instruments, and Educational Sessions* (October 1988). (54 FR 10049, March 9, 1989)

**Catalog of Federal Domestic Assistance Number**

The catalog of Federal Domestic Assistance Numbers are 13.116, Project Grants and Cooperative Agreements for Tuberculosis Control Programs, and 13.118, Acquired Immunodeficiency Syndrome (AIDS) Activity.

**Application Submission and Deadline**

Applicants may submit more than 1 application under this announcement.

Each application, however, must be complete as it will be evaluated without reference to any other application.

The original and two copies of each application (PHS Form 5161–1) must be submitted to Candice Nowicki-Lehnherr, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, on or before June 23, 1989.

A. *Deadline.* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or,

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. *Late Applications.* Applications which do not meet the criteria in A.1. or

2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, and other materials may be obtained from Marsha D. Driggans or Nealean Austin, Grant Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305, telephone (404) 842–6575, or FTS 236–6575. Announcement 920, *Tuberculosis and Human Immunodeficiency Virus (HIV) Demonstration Projects*, must be referenced in all requests for information pertaining to these projects.

Technical assistance for the laboratory studies may be obtained from Robert C. Good, Ph.D., Respiratory Diseases Branch, Division of Bacterial Diseases, Center for Infectious Diseases, Centers for Disease Control, Atlanta, GA 30333, (404) 639–3021 or FTS 236–3021.

Technical assistance for the treatment and prevention studies may be obtrained from Richard J. O'Brien, M.D., Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–2530 or FTS 236–2530.

Dated: May 1, 1989.

Signed by:

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 89–10798 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 89M–0112]**

### Unilens Corp. Premarket Approval of Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Unilens Corp., LaQuinta, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Unilens ™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens. The device is to be manufactured under an agreement with Ocu-Ease Optical Products, Inc., Pinole, CA, which has authorized Unilens Corp. to incorporate information contained in its approved premarket approval applications for the Ocu-Flex (Ocufilcon B) Hydrophilic Contact Lens and the Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of February 28, 1989, of the approval of the application.

**DATE:** Petitions for administrative review by June 5, 1989.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On October 31, 1988, Unilens Corp., LaQuinta, CA 92253, submitted to CDRH an application for premarket approval of the Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens. The device is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic, hyperopic, and/or presbyopic. The lens may be worn by persons who exhibit astigmatism of up to 4.00 diopters (D) that does not interfere with visual acuity. The lens ranges in spherical powers from −20.00 D to +10.00 D and adds powers up to 4.00 D and is to be disinfected using a chemical lens care system. The application includes authorization from Ocu-Ease Optical Products, Inc., Pinole, CA 94564, to incorporate information contained in its approved premarket approval applications for the Ocu-Flex (Ocufilcon B) Hydrophilic Contact Lens and the Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens.

On February 28, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above. The labeling of the Unilens™ 53 (Ocufilcon B) Soft (Hydrophilic) Aspheric Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to aprove this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under §10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to

grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 5, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53)

Dated: April 26, 1989.

**Walter E. Gundaker,**

*Acting Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 89–10762 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–01–M

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## Family Support Administration

### Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The following are those packages submitted to OMB since the last list was published on April 14, 1989.

For a copy of packages, call the FSA, Reports Clearance Officer on 202–252–5598.

1. WIN certification Report (117–A) and WIN Grant Change Report (177–B)—0970–0069.

WIN Certfication Report form is used to report the number and type of certification activity.

*Respondents:* State or local governments; *Number of Respondents:* 86; *Frequency of Response:* Quarterly; *Average Burden per Response:* 1 hour; *Estimated Burden:* 344 hours.

WIN Grant Change Report form is used to report changes in welfare grants due to employment of registrants.

*Respondents:* State or local governments; *Number of Respondents:* 86; *Frequency of Response:* Quarterly; *Average Burden per Response:* 1.08 hour; *Estimated Burden:* 372 hours.

2. Evaluation of Pre-Eligibility Fraud Detection Measures—NEW—State agencies are asked to develop annual narrative evaluations of their detection methods to ensure the effectiveness of their pre-eligibility fraud detection methods. This should facilitate their monitoring, evaluating, and refining of their procedures as needed and appropriate. Only AFDC applicants would be affected.

*Respondents:* State or local governments; *Number of Respondents:* 54; *Frequency of Response:* 1; *Average Burden per Response:* 12 hours; *Estimated Burden:* 648 hours.

*OMB Desk Officer:* Justin Kopca.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW, Washington, DC 20503.

Dated: May 2, 1989.

**Sylvia E. Vela,**

*Deputy Associate Administrator, Office of Management and Information Systems, FSA.*

[FR Doc. 89–10835 Filed 5–4–89; 8:45 am]

BILLING CODE 4150–04–M

### Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OBM) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Since the last scheduled publication for April 28, 1989, the following package was submitted to OMB: (For a copy of the package below, call the FSA Reports Clearance Officer on 202–252–5597.)

*Request for extension of approval and expedited review of OCSE—56 Statistical/Financial Reporting Form.* The information for this form will be used to report Child Support Enforcement (CSE) activities to the Congress (required by law) and to complete performance indicators utilized in program audits. The form also assists the Office of Child Support Enforcement (OCSE) in monitoring and evaluating State CSE programs. Respondents will be state agencies involved in child support activities. *Number of Respondents: 54; Frequency of Response:* 1; *Average Burden per Response:* 2.95; *Estimated Annual Burden:* 637.2.

In keeping with the regulations, we are attaching the OCSE Form 56 and Instructions. Consideration will be given to comments and suggestions received by May 22, 1989.

*OMB Desk Clearance Officer:* Justin Kopca

Written comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: April 11, 1989.

**Naomi B. Marr,**

*Deputy Associate Administrator, Office of Management and Information Systems, FSA.*

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT
ROCKVILLE, MD 20852

REPORTING REQUIREMENTS

ACTION TRANSMITTAL

OCSE-AT-85-18
October 24,1985

TO: STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT, AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Instructions for Completing Form OCSE-56, "Financial/Statistical Report".

CONTENT: The following instructions give guidance for completing the form in the most accurate manner. This form is used by the State to report financial and statistical activities that take place under title IV-D of the Social Security Act. Part I should be completed for each quarter and submitted within 45 days of the end of each quarter. Part II should be completed at the end of the fiscal year for the entire year and submitted with Part I for the fourth quarter within 45 days of the end of the year. State agencies administering Child Support Enforcement programs under title IV-D of the Social Security Act are required to submit this form.

State and local procedures for compiling the required data should be reviewed and, if necessary, modified to correspond with these instructions. Questions regarding the particular practices and circumstances in a given State, as well as those regarding either the content of the form or the procedures for its completion, should be directed to the appropriate OCSE Regional Office.

SUPERSEDED MATERIAL: OCSE-AT-83-15, dated July 22, 1983.
OCSE-AT-78-6, dated March 15, 1978

ATTACHMENT: Form OCSE-56.

EFFECTIVE DATE: Report for the quarter ending December 31, 1985.

INQUIRIES TO: OCSE Regional Representatives.

Deputy Director
for Office of Child Support
Enforcement

## PART I QUARTERLY REPORTING REQUIREMENTS

### SECTION A: IV-D CASELOAD

A IV-D case is defined as each absent parent (mother, father, or putative father, and their common child/children) who is now or may eventually be obligated under law to support one or more dependent children. An absent parent is counted once for each family which has a dependent child he or she may be obligated to support.

**Column (A): AFDC and Foster Care Cases**

1. A IV-D AFDC case is defined as an absent parent whose child/children are receiving or are due to receive money payments under title IV-A of the Social Security Act and whose children's support rights have been assigned by the caretaker relative to the State, and for which a valid referral to the State IV-D agency has been made. Every absent parent of the child/children receiving a IV-A grant is to be counted as a IV-D case. When a case is terminated by IV-A and IV-D services are continuing to be provided, the IV-D AFDC case should be closed and a IV-D non-AFDC case should be opened. If arrearages are still owed an AFDC arrearage only case should also be opened. NOTE: This may result in counting a case more than once.

2. A IV-D Foster Care case is defined as an absent parent whose child/children are receiving foster care maintenance payments under title IV-E of the Social Security Act. Every absent parent of the child/children receiving a IV-E grant is to be counted as a IV-D case.

   NOTE: AFDC and Foster Care case counts or actions should be combined.

**Column (B): Non-AFDC Cases**

1. A IV-D non-AFDC case is defined as an absent parent whose child/children are not currently receiving IV-A AFDC payments and in which the caretaker relative has made written application for IV-D non-AFDC services. Also include in Column B cases which have been terminated by IV-A where the family continues to receive IV-D services. NOTE: If arrearages are still owed, an AFDC arrears only case should also be opened. This will result in counting a case more than once.

   IV-D cases which are non-Federal Foster Care cases are also included in this category.

**Column (C): AFDC and Foster Care Arrears Only Cases**

1. An AFDC arrears only case is defined as an absent parent whose child/children are former recipients of IV-A payments and the absent parent owes the State reimbursement of these payments.

2. A Foster Care arrears only case is defined as an absent parent whose child/children are former recipients of foster case maintenance payments under title IV-E of the Social Security Act and the absent parent owes the State reimbursement of these payments.

Line 1 - Cases Continued From Prior Quarter

Report the total number of open IV-D cases continued from the previous quarter. This number should be the same as that reported on line 4 of the previous report, with one exception. If a State determines that its previous figures were incorrect, the correct numbers should be shown in line 1 of the current report, with a footnote indicating the reason for the change.

Line 2 - Cases Opened During the Quarter

Report the total number of IV-D cases opened during the quarter, either through receipt of a valid written referral from the State IV-A or IV-E agency (Column A), receipt of a non-AFDC application from the caretaker relative (Column B), or terminated IV-A and IV-E cases; both those where IV-D is continuing to provide services (Column B), and those with arrears (Column B and Column C).

Count on this line all cases opened as a result of requests for assistance received from other States (see 45 CFR 302.36 and 303.7). Such cases must have been established as IV-D cases under the State plan of the initiating State and referred under the same plan. Responding States should count locate-only requests as open cases only if the responding State or local IV-D agency has made an actual attempt to locate the absent parent. As used here, the term "actual attempt" covers both computerized and manual processing of locate requests.

URESA petitions from other States are to be counted as open cases only if the initiating petition specifically requires action on the part of the responding State's IV-D agency (i.e., the IV-D agency is specifically mentioned in the URESA petition and IV-D activity on behalf of the petition qualifies for Federal Financial Participation).

Line 3 - Cases Closed During the Quarter

Report the number of cases formally closed during the quarter. There are various reasons for closing IV-D cases. States should provide guidance to their local jurisdictions on valid reasons for case closure.

Line 4 - Cases Open on the Last Day of the Quarter

Report the number of cases open on the last day of the quarter. This number should be equal to line 1 (cases continued from the prior quarter) plus line 2 (cases opened during the quarter) minus line 3 (cases closed during the quarter).

**SECTION B: ACTIONS THIS QUARTER**

In this section, report the number of actions successfully completed by the reporting State for either the reporting State or for other States. Credit for a successful action is to be claimed only by the State which performs the action — not by both the requesting and the responding States. In addition, the laws of the State in which the action is performed determine whether the action can be considered successful (only legally enforceable actions are to be counted). Count all successful actions, even if there were more than one per case.

Line 5 — IV-A Cases Closed In Which a Child Support Collection Was Made

Report all cases terminated by IV-A in which there was a child support collection. This information is required by statute to be reported and should be obtained from the State's IV-A Office. This information should be reported for the quarter during which it is received from IV-A, regardless of when the termination actually took place.

Line 6 — Absent Parents Located

Report the number of cases in which an absent parent location was made during the quarter. Please note that this figure represents cases rather than the actual number of absent parents located. Under OCSE definitions, an absent parent responsible for the support of children in more than one family is counted as a separate case for each family; thus, an absent parent responsible for supporting children in three families would, when located, be counted as three locates.

A location is defined as the determination of an address at which the absent parent (or putative father) can be served or receive legal notices. This may be either a residence or an employment address. The methods for verifying whether an alleged address is serviceable are left to the discretion of each individual State. Any legal verification methods which a State chooses to use are acceptable as long as the State considers the final address to be serviceable.

If a State or local IV-D agency is able to obtain jurisdiction over an absent parent's material assets—even if the absent parent himself is not actually located—this may also be counted as a locate.

Valid absent parent addresses obtained through the Federal Tax Refund Offset Program (TROP) may also be counted as successful locations, provided the locate information obtained via TROP was not previously known by the IV-D agency.

Relocations are also to be included in this count. If the same absent parent has had to be located on more than one occasion during the quarter, the State should count all locations.

In interstate cases, credit for locating an absent parent may be claimed by both the requesting and the responding States if both States performed work to ascertain or verify the location.

Line 7 — Paternities Established

Report the number of children for whom paternity was established during the quarter. A paternity is defined as the legal establishment of fatherhood for a child after the opening of a IV-D case, either by court determination or voluntary acknowledgement (in States where such acknowledgements are legally enforceable). A paternity established prior to a case's referral to IV-D is not to be counted in this item.

If more than one child is included in a single paternity establishment, each child is to be counted separately.

If a paternity determination action includes an order for support, the paternity should be counted on line 7 and the support obligation should be counted separately on line 8.

Line 8 — Support Obligations Established

Report the number of support obligations established by the IV-D agency during the quarter. An obligation is defined as the legal establishment of an amount of money which is to be paid on a regular basis by a non-custodial parent for the support of the parent's children. This amount must be established by court order, voluntary agreement (in States where such agreements are legally enforceable), or other legal process. Voluntary support agreements and any modifications to them are not to be counted in this item if such agreements are not legally enforceable in the reporting State.

Modifications to the amount of the obligation should be counted in this item if they are the result of actions in which the State or local IV-D Office participated. Both increasing and decreasing modifications should be reported.

Judgments, court orders and wage assignments for arrearages are not to be counted in this item.

Support obligations which order joint payment for both current support and arrearages are to be counted as the establishment of one support obligation.

A support obligation established prior to a case's referral from IV-A to IV-D is not to be counted in this item unless the State or local IV-D agency finds it necessary to modify the amount of the obligation after the case is referred from IV-A.

Line 9 — Cases With Collections

Report the number of cases for which one or more collections were made during the second month of the quarter. (The second month is used in order to permit States an additional month in which to compile information from local agencies.) Each case should be counted only once, regardless of the number of collections

made for that case during the month. For example, if an absent parent makes two payments during the month for case A, one payment for case B and three payments for case C, the State would report three cases with collections.

NOTE: Data elements in this section should reflect both intra-State and inter-State cases. However, credit for a case in which a collection has been made is to be claimed only by the State actually responsible for the collection - not by both the requesting and responding State. (This is not the data which will be used for calculating incentives based on interstate activity; that information will be obtained from other financial reporting forms).

Cases in which a collection was received as a result of the Federal Tax Refund Offset Program are to be included in this section. Should a case receive both an intercept collection and a "regular" collection during the second month of the quarter, the case is to be counted only once.

Report the number of cases in which a collection was made on an obligation established by court order or administrative procedure or any legally enforceable means. Also include cases where a support order has not been established but a voluntary payment has been made. (This information should also be reported on line 14).

## SECTION C: INTERSTATE ACTIVITY

Interstate activity refers to the number of cases for which interstate requests for assistance were either sent or received at any time during the quarter. Note that this figure represents cases rather than the actual number of requests. Each case should be counted only once, regardless of how much correspondence has taken place concerning it. All cases counted in this section should also have been counted in Section A.

Requests for assistance include requests for location, the establishment of paternity or support orders, enforcement of support, or any other IV-D activity. This includes both URESA and non-URESA activity, and applies to requests made or received by either the IV-D agency or any agency (public or private) working under an agreement with the IV-D agency.

If an initiating State does not specify the AFDC/non-AFDC status of a case for which it is requesting assistance, the responding State should make every effort to obtain this information from the initiating State. Only through such efforts will the problem of non-specification of IV-D case type be resolved.

### Line 10 — Cases in Which Requests for Assistance Were Sent to Other States

Report on this line the number of cases in which a request for assistance was sent to another State during the quarter. This figure should represent the number of

cases for which assistance is requested, not the actual number of requests. Thus, if requests for assistance were sent to multiple States for the same case, this would be reported once. Include all assistance requested during the quarter, as outlined above.

Line 11 — Cases in Which Requests for Assistance Were Received from Other States

Report on this line the total number of cases in which a request for assistance was received from another State during quarter. As indicated above requests for assistance include all IV-D activities.

Line 12 — Cases in Which Collections Were Sent to Other States During the Second Month of the Quarter

Report on this line the total number of cases for which collections were sent to other States during the second month of the quarter. All cases for which collections were paid to other States should be reported, regardless of when the request for assistance was received. The second month of the quarter is used in order to permit States an additional month in which to compile information.

Line 13 — Cases for Which Collections Were Received From Other States During the Second Month of the Quarter

Report on this line the total number of cases for which collections were received from other States during the second month of the quarter. Include all interstate cases for which collections were received, regardless of when the request for assistance was sent. The second month of the quarter is used in order to permit States an additional month in which to compile information.

**PART II: ANNUAL REPORTING REQUIREMENTS**

The following sections are to be completed once a year, in the report for the quarter ending September 30. Data reported should reflect the entire year.

**SECTION D: VOLUNTARY PAYMENTS**

Line 14 — Payments Received For Cases Where an Order for Support Has Not Been Established

Report on this line the number of cases for which payments have been received where a legally enforceable support order has not been established. In the first subcolumn report the number of cases where voluntary payments were received (no existing support order) and in the second subcolumn report the total amount received during the year.

Do not include collections received for cases in which a legally enforceable support order has been established - even if such collections exceed the amount of support which was ordered to be paid. Such amounts should be reported in Section E or F as appropriate.

## SECTION E: ACCOUNTS RECEIVABLE: CURRENT YEAR

In this Section and Section F, each column is divided into two sub-columns. In the first sub-column report the number of support orders as described in each line. In the second sub-column report the corresponding dollar value attributed to such orders. It is permissable to estimate the number of support orders in each column using one point-in-time. For example, a count of orders at the end of the fiscal year in each of the three categories. This estimate would relieve states from keeping day to day counts of orders in each category. In this section, as described by each line, report only information pertaining to support ordered for the current reporting year.

Line 15 — Orders Entered During the Year for Current Year Support

Report the total number of support orders for the current year which entered the IV-D system during the year and the corresponding sum of the periodic amounts ordered to be paid for the entire year. The number of support orders reported should represent obligations for the current year which entered the IV-D system during the year. A point-in-time estimate of orders is acceptable. This figure includes pre-existing support orders associated with cases opened during the year and new orders established during the year. The corresponding dollar amount reported should represent the total amount of support ordered to be paid for the current year.

If a support order was established during the year, the order should be reported in the first sub-column, and all support due since the obligation was established should be reported in the second sub-column.

If a IV-D case was opened during the year with an existing support order of $200 per month, the order would be reported in the first sub-column (1), and the sum of the monthly obligations for the year would be reported in the second sub-column ($2400). If the same case was opened during the year but included a prior year arrearage amount of $600, only the amounts ordered to be paid for current year support should be reported on this line. The $600 prior year arrearage would be reported separately in Section F.

Line 16 — Total Orders for Current Year Support

Report the total number of support orders for the current year and the corresponding sum of the periodic amounts ordered to be paid for the entire year. The number of orders reported on this line should reflect both new orders which entered the IV-D system this year (the figure reported on line 15), and existing orders for current year support associated with IV-D cases from the prior year. A point-in-time estimate of orders is acceptable. The dollar amount reported on this line should represent the total amount of support ordered payable this year for all orders reported in the first sub-column; the dollar amount reported on line 15, and the amount ordered payable for the current year for orders entered in prior years.

If a IV-D case was opened 2 years ago with a monthly support order of $200 the order would be counted in the first sub-column (1), and the support ordered for the current year would be reported in the second sub-column ($2400), regardless of the payment status of the order. If arrears from prior years are also owed, the past-due amounts would be reported separately in section F.

The data reported on this line should reflect all support ordered for the current year.

Line 17 — Collections Received this Year Applicable to Support Orders Entered During the Year

Report the total number of support orders from line 15, for which collections were received this year and the total amount of such collections for the entire year. The number of support orders reported on this line should represent all orders for current year support which entered the IV-D system during the year and for which support was paid. The dollar amount reported should represent the total amount collected on these orders for the entire year.

For uniformity in reporting, States are encouraged to utilize the LIFO (Last In - First Out) system of accounting. Thus, if a case were opened during the year with an existing support order of $200 per month and an arrearage of $500 from prior years, collections received this year would first be credited to support ordered for the current year ($2400). If the amount of support ordered to be paid for the current year was satisfied, any remaining collections received would be credited to past-due amounts owed, and would be reported in Section F.

The data reported in this element is directly comparable to the data reported on line 15. The support orders reported on this line should not exceed the number reported on line 15. The dollar amount reported on this line could exceed that reported on line 15, if an absent parent paid a greater amount of support than was ordered.

Do not include collections received for amounts owed in prior years on this line. Collections received as a result of tax offset program should not be reported on this line since they represent collections toward amounts due in prior years.

Each order should be reported once on this line, regardless of the number of times during the year that collections were received for that order.

Line 18 — Total Collections Applicable to Total Amounts Ordered for the Current Year

Report the total number of support orders for the current year (from line 16), for which collections were received, and the total amount received for such orders. The number of orders reported on this line should reflect all orders for current year support for which collections were received; both collections received for orders entered during the year (line 17) and collections received for current year support

for orders entered in prior years. The dollar amount reported should represent the total amount of collections received during the year applicable to all orders for current year support.

The data reported on this line is directly comparable to the data reported on line 16. Each order should be reported once, regardless of the number of times during the year that collections were received.

As stated on line 17, States are encouraged to utilize the LIFO system of accounting when crediting collections. Thus, if a case had a monthly support award of $200 and was $1000 in arrears for payment of prior year support, and collections totalling $2600 were received during the reporting year; line 16 and line 18 should indicate (1) in the first sub-column, and ($2400) in the second sub-column; with the remaining $200 applied toward the $1000 arrearage and reported in Section F.

## SECTION F: ACCOUNTS RECEIVABLE - PRIOR YEARS

In this section, as described in each line, report information pertaining to support orders with past due amounts payable from prior years.

In the first sub-column report the applicable number of support orders as indicated by each line and in the second sub-column report the corresponding amount of past due prior year support. It is permissable to estimate the number of support orders in each column using one point-in-time. For example, a count of orders at the end of the fiscal year in each of the three categories. Estimates would relieve states from keeping day to day counts of orders in each category.

### Line 19 - Total Orders With Past Due Amounts Owed for Prior Year Support Including Support Orders Entered During the Year with Past Due Amounts Owed from Prior Years

Report the total number of support obligations with amounts owed from prior years and the sum of such amounts. The number of orders reported on this line should include those orders which entered the IV-D system during the year with prior year arrearages and all other orders in the IV-D system with amounts owed from prior years. The number of orders reported on this line should reflect the total number of orders in the IV-D system which have past due amounts owed from prior years. The dollar amount reported on this line should reflect the total amounts of past due support ordered to be paid in prior years. Only prior year past due amounts should be reported on this line - even if the support ordered for the current year remains outstanding.

If a case entered the IV-D system three years ago with a monthly support award of $200, and arrearages of $1200 and no support has been collected for the case, the order would be reflected in this report as follows: Line 16, first subcolumn 1 order - second subcolumn $2400 (current year support = 12 x $200); Line 20, first subcolumn

1 order - and in the second subcolumn $6,000 (prior year support = 24 x $200 plus $1,200 arrears).

If a case entered the IV-D system during the reporting year with a monthly support award of $200, and arrearages of $6,000, the order would be reflected in the report as follows: Line 15, first subcolumn 1 order - second sub-column $2,400 (current year support = $200 x 12); Line 16, first subcolumn 1 order - second subcolumn $2,400; Line 19, first subcolumn 1 order - second subcolumn $6,000 (amount of prior year arrears) and Line 20, first subcolumn 1 order - second subcolumn $6,000.

Line 20 - Total Collections Applicable to Total Orders Owing Past Due Support from Prior Years Including Support Orders Entered During the Year with Past Due Amount Owed from Prior Years

Report the total number of orders owing past due support from prior years for which collections were received during the year and the total dollar amount of such collections. The figure reported in the first sub-column should represent all orders in the IV-D system owing past due amounts from prior years for which collections were received and the total amount of such collections for the entire year. Each order should be counted once regardless of the number of times collections toward prior years support were received. Do not include those collections reported in Section E which were credited toward amounts of support for the current year.

TROP collections should also be reported here - however, if multiple collections toward arrearages are received the order should be counted only once.

The total amount of collections reported on this line plus that reported on line 18 should equal the total amount of child support collections received during the year.

## SECTION G: STAFF AND ASSOCIATED EXPENDITURES

In column A of this section report the number of staff employed on the last working day of September of the reporting year. Report these numbers in full-time equivalent (FTE) figures, i.e., divide the total number of hours worked by all part-time staff by 2080 hours. This makes staffing figures reported by States with varying staffing patterns comparable.

In column B report the amount of money in salary and fringe benefits associated with the figures reported in column A.

Line 21 - State and Local IV-D Agency

Report both the total number of FTE staff employed by the State IV-D agency and any local IV-D agencies, and costs associated with the staff. Do not include any staff working under cooperative or purchase of service agreements (see line 24). Do include staff who are assigned to work for the IV-D agency from another agency and whose salaries are paid from IV-D funds rather than from an ADP

service agreement, purchase of service agreement, etc. (e.g., Assistant Attorney General, data processing specialists, and fiscal specialists).

Line 22 - Purchase of Service and Cooperative Agreements

Report the total number of FTE staff employed by an agency (public or private) working under a cooperative agreement or a purchase of service agreement with the IV-D agency and costs associated. Do not count any Staff already counted in line 23.

**SECTION H: EXPENDITURES**

In Public Law 98-378 Congress set forth a statutory requirement to collect information on the "amount of administrative costs expended in each functional category of expenditures by each state".

Line 23 - Total Expenditures for Federal Funding

Report on this line "annual" total expenditures eligible for Federal Funding. This figure should be the total of all expenditure figures reported on Line 1 of Form OCSE-41 for each quarter of the fiscal year. The amounts reported on lines 26 and 27 and 28 should be the same as the figure reported on this line.

Line 24 - AFDC and Non-AFDC Expenditures

Report on this line, the amount of expenditures eligible for Federal funding as they apply to the AFDC and non-AFDC portions of the program. (This information was previously required to be reported on the OCSE-41).

Line 25 - Direct and Indirect Costs

The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits. OMB circular A-87 (Part D) covers the definitions of these types of costs.

There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respects to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore that each item of cost be treated consistently either as a direct or an indirect cost.

Break out the total annual costs reported in line 25 into direct and indirect based on OMB Circular A-87 and applicable state regulations.

Line 26 - Functional Cost Categories

As stated above, States are required by statute to report expenditures by functional category. The reporting of functional expenditures should be based on an approved (by the Regional Office) cost allocation plan or, a timestudy or a valid work sample. Total expenditures should be allocated to the following categories:

Paternity Determination
Location
Obligations Established
Enforcement Activities
Financial Distribution Process

III. General Reporting Instructions

The requirements contained in this Action Transmittal meet, in part, the Secretary's responsibilities under section 452(a)(10) of the Social Security Act to develop information required for OCSE's Annual Report to Congress. In addition, the information to be reported is essential if the Secretary is to meet the requirements contained in section 452(a)(1) and (2) to establish standards for an effective program and minimum organizational and staffing requirements. The authority to collect this information is set forth in regulations at 45 CFR 302.15(a) and Public Law 98-35.

1. Due Dates

Reports are to be submitted by State IV-D agencies quarterly, within 45 days after the last day of the reporting quarter. One copy is to be submitted to the appropriate OCSE Regional Office; and one copy is to be submitted to the OCSE Central Office at the following address:

Office of Child Support Enforcement
Planning and Evaluation Branch
6110 Executive Blvd., Room 1010
Rockville, MD 20852

If the report will be delayed beyond the 45-day deadline, the Regional Office should be notified by telephone as soon as possible of the expected submittal date. If the report is delayed because some data elements are not yet available, all available data should be reported in a preliminary report, which should be identified as such (see section 2 below).

2. Sampling and Estimating

The use of sampling is encouraged if it is the only way in which a State can obtain accurate data within the reporting deadline. Procedures and guidelines for statistical sampling methods are contained in OCSE Information Memorandum #79-5, dated February 16, 1979. Any statistical sampling plan must be approved by the Regional Office before being implemented.

All estimated data should be identified with a capital "E" after the number. If the estimates are based on any method other than an approved statistical sampling plan, the basis for the estimate should be explained in a supporting statement attached to the report.

Rather than report incomplete figures, States should estimate data if necessary. Representative data should be reported for all jurisdictions within a State; if actual data are not available for a certain jurisdiction, they should be estimated and footnoted as such. All estimates based on incomplete data must then be amended in revised reports as soon as actual data becomes available.

3. Implementation

Supplies of the OCSE-56 will be sent to the Director of the agency administering the Child Support Enforcement program in each State.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF CHILD SUPPORT ENFORCEMENT

FORM APPROVED
OMB NO. 0970-0057

# OFFICE OF CHILD SUPPORT ENFORCEMENT
# FINANCIAL/STATISTICAL REPORT
# OCSE-56

NOTICE: 45 CFR Section 302.15(a)(2) provides authority to require the submission of this report. Failure to report can result in a finding of noncompliance with State plan requirements. (45 CFR Section 305.35(b))

FILL IN EACH BLOCK. IDENTIFY ALL ESTIMATES

| State: | Quarter Ended: |
|---|---|
| | |

**PART I: QUARTERLY REPORTING REQUIREMENTS**

| Items | AFDC and FC Cases (A) | Non-AFDC Cases (B) | AFDC and FC Arrears Only Cases (C) |
|---|---|---|---|
| **Section A: IV-D Child Support Cases** | | | |
| 1. Cases continued from prior quarter | | | |
| 2. Cases opened during the quarter | | | |
| 3. Cases closed during the quarter | | | |
| 4. Cases open on last day of quarter | | | |
| **Section B: Actions This Quarter** | | | |
| 5. IV-A cases closed where a child support payment was received | | | |
| 6. Absent parents located | | | |
| 7. Paternities established | | | |
| 8. Support obligations established | | | |
| 9. Cases with collections in the second month of the quarter (intrastate and interstate, performed by reporting state) | | | |
| **Section C: Interstate Activity** | | | |
| 10. Cases in which requests for assistance were sent to other states | | | |
| 11. Cases in which requests for assistance were received from other states | | | |
| 12. Cases in which collections were sent to other states in the second month of the quarter. | | | |
| 13. Cases in which collections were received from other states in the second month of the quarter. | | | |

FORM **OCSE-56** (9-85) (Formerly OCSE-3 Prior editions obsolete)

**PART II: ANNUAL REPORTING REQUIREMENTS**

DRAFT

| Items | AFDC and FC | | Non-AFDC | | AFDC and FC Arrears Only | |
|---|---|---|---|---|---|---|
| **Section D: Voluntary Payments** | Cases | Amounts | Cases | Amounts | Cases | Amounts |
| 14. Number of cases without a support order for which collections were received and amount | | $ | | $ | | $ |
| **Section E: Accounts Receivable - Current Year** | Orders | Amounts | Orders | Amounts | Orders | Amounts |
| 15. Orders entered during the year for current year support and total amounts ordered | | $ | | $ | | $ |
| 16. Total orders for current year support and total amounts ordered | | | | | | |
| 17. Collections applicable to orders for current year support entered during the year | | | | | | |
| 18. Total collections applicable to total orders for current year support | | | | | | |
| **Section F: Accounts Receivable - Prior Years** | Orders | Amounts | Orders | Amounts | Orders | Amounts |
| 19. Total orders for past due prior year support including orders entered during the year with prior year past due support owed | | $ | | $ | | $ |
| 20. Total collections applicable to total orders owing past due prior year support including orders entered during the year with prior year past due support owed | | | | | | |

| **Section G: Staff** | FTE Staff | Salary/Fringe Benefit(s) |
|---|---|---|
| 21. State and local IV-D agency | | $ |
| 22. Purchase of service and cooperative agreements | | |

| **Section H: Expenditures** | | |
|---|---|---|
| 23. Total expenditures, from line 1, OCSE 41 | $ | |
| 24. Expenditures | AFDC $ | NON AFDC $ |
| 25. Costs | DIRECT $ | INDIRECT $ |

26. Functional Cost Categories

| A. PATERNITIES | B. LOCATES | C. ORDERS ESTABLISHED |
|---|---|---|
| $ | $ | $ |
| **D. ENFORCEMENT** | **E. FINANCIAL DISTRIBUTION PROCESS** | |
| $ | $ | |

Back of Form **OCSE-56** (9/85)

DRAFT

OMB No. 0970-0057

OFFICE OF CHILD SUPPORT ENFORCEMENT

FINANCIAL/STATISTICAL REPORT

OCSE-56

Public reporting burden for this collection of information is estimated to average 3.0 hours per response, including the time for reviewing instructions, searching exisiting data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collections of information, including suggestions for reducing this burden to the Office of Child Support Enforcement 370 L'enfant Promenade S.W., Washington D.C. 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget Washington D.C. 20503

[FR Doc. 89-10892 Filed 5-4-89; 8:45 am]
BILLING CODE 4550-04-C

## Health Resources and Services Administration

### "Low Income Levels" for Health Careers Opportunity Program

This Notice updates the income levels that are used to define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Program, and the program of Financial Assistance for Disadvantaged Health Professions Students, section 843, Scholarships for the Undergraduate Education of Professional Nurses, section 827, Nursing Education Opportunities for Individuals for Disadvantaged Backgrounds and section 781, Area Health Education Centers of the Public Health Service Act, as amended.

Section 57.1804(b)(2) and 57.1905(b)(2) of the program regulations require that the Secretary publish periodically in the **Federal Register** the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantaged backgrounds.

The Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, amended section 787 to include stipends under subsections (a)(2)(F) and (b) to individuals from disadvantaged backgrounds and of exceptional financial need (as defined by regulations issued by the Secretary under section 758), who are students at schools of medicine, schools of osteopathic medicine or dentistry.

The Health Professions Reauthorization Act of 1988, Title VIII, Pub. L. 100–607, established two new sections:

**Section 827**

Provides for grants to increase opportunities for individuals from disadvantaged backgrounds to pursue a nursing education. This provision was previously provided under Purpose 1, Nursing Special Projects, section 820 of the PHS Act.

**Section 843**

Provides financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate or baccalaureate degree programs or in programs of nursing education leading to first degree in professional nursing.

The income figures below were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by the Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation of health professions grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1988.

| Size of parents family [1] | Income level [2] |
|---|---|
| 1 | $7,900 |
| 2 | 10,300 |
| 3 | 12,300 |
| 4 | 15,700 |
| 5 | 18,500 |
| 6 or more | 20,800 |

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1988.

Dated: May 1, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR. Doc. 89–10815 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–15–M

## Final Review Criteria and Funding Priority for Grants for Two-Year Programs of Schools of Medicine or Osteopathy

The Health Resources and Services Administration announces the final Review Criteria and Funding Priority for Fiscal Year 1989 for Grants for Two-Year Programs of Schools of Medicine or Osteopathic Medicine.

Section 788(a) of the Public Health Service Act authorizes the award of grants to maintain and improve schools which provide the first or last two years of education leading to the degree of doctor of medicine or osteopathic medicine. Grants provided under this authority to schools that were in existence on September 30, 1985, may also request support for construction and purchase of equipment.

To be eligible for a grant under this authority, the applicant must be a public or nonprofit private school providing the first or last two years of education leading to the degree of doctor of medicine or osteopathic medicine and be accredited or be operated jointly with a school that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education.

Proposed review criteria and a proposed funding priority were published in the **Federal Register** of February 14, 1989 (54 FR 6761), for public comment. No comments were received during the 30-day comment period. Therefore, the review criteria and funding priority as proposed will be retained as follows:

**Final Review Criteria**

Approval of all applications will be based on an analysis of the following factors:

(1) The extent to which the project meets the intent of section 788(a) legislation;

(2) The administrative and management ability of the applicant to carry out grant support objectives in a cost effective manner;

(3) The adequacy of the qualifications and experience of the staff and faculty;

(4) The relative effectiveness of the proposed project in improving the quality of and/or access to medical education; and

(5) The extent to which the project is effective in its recruitment and retention of minority and disadvantaged students.

**Final Funding Priority**

In determining the order of funding of approved applications for Fiscal Year 1989, priority will be given to:

Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion or more to their numbers in the general population or can document extent to which the applicant attracts, retains, and assures program completion of underrepresented minorities (i.e., Black, Hispanic, American Indian, Alaskan Native minority trainees).

This program is listed at 13.149 in the *Catalog of Federal Domestic Assistance.*

Dated: May 1, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 89–10814 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–15–M

## Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1989:

*Name:* Subcommittee on Medical Education Programs and financing of the Council on Graduate Medical Education.

*Time:* June 1, 1989, 8:00 a.m.–5:00 p.m.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814, Open for entire meeting.

*Purpose:* The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply

& distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; Federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

*Agenda:* The Subcommittee will discuss matters of graduate medical education financing and medical education in ambulatory settings.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D. Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

*Name:* Subcommittee on Physican Manpower of the Council on Graduate Medical Education.

*Time:* June 1, 1989, 8:00 a.m.–5:00 p.m.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. Open for entire meeting.

*Purpose:* The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

*Agenda:* Presentation by David A. Kindig, M.D., Ph.D., of paper developed for the Council on the geographic distribution of physicians.

Presentations by physician specialty societies on revisions considered necessary for updating assessments of specialty supply adequacy originally developed by the Graduate Medical Education National Advisory Committee.

Anyone requiring information regarding the subject Subcommittee should contact Jerald M. Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6326.

*Name:* Council on Graduate Medical Education.

*Time:* June 2, 1989, 8:00 a.m.–4:00 p.m.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814. Open for entire meeting.

*Purpose:* Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

*Agenda:* The Council will receive and discuss the reports from its two Subcommittees. The Council will also receive legislative updates from Health Resources and Service Administration, Health Care Financing Administration, and the Veterans' Administration. John Gienapp, Ph.D., Accreditation Council for Graduate Medical Education (ACGME) will give an overview of the ACGME and discuss issues for COGME consideration. Paul G. Rogers, J.D., will discuss the report of the National Leadership Commission on Health Care and its implications for physician manpower and medical education.

Anyone requiring information regarding the subject Council should contact Dr. Donald L. Weaver, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 Telephone (301) 443–6190.

Agenda Items are subject to change as priorities dictate.

Date: May 1, 1989.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 89–10812 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–15–M

## National Vaccine Injury Compensation Program List of Petitions Received

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by Section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW., Washington, DC 20005, (202) 633–7257. For information on the Public Health Service's role in the Program, contact the Director, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4–101, Rockville, MD 20857, (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at Section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from April 6 through April 26, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused

by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Suite 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Elizabeth Webb on Behalf of Jared Webb, Lake Oswego, Oregon, Claims Court Docket No. 89–34 V.
2. Ralph M. and Dorothy Bell on Behalf of, Victoria Lynn Bell, Philadelphia, Pennsylvania, Claims Court Docket No. 89–35 V.
3. Tom H. and Sandra Dunham on Behalf of, Tess A. Dunham, Murphysboro, Illinois, Claims Court Docket No. 89–36 V.
4. Judy Nelson Robert, Summerville, South Carolina, Claims Court Docket No. 89–37 V.
5. Judy L. Farris on Behalf of Michael Gary Farris, Ottawa, Kansas, Claims Court Docket No. 89–38 V.
6. Tammie DeLynn Bush on Behalf of Karen DeLynn Bush, Littlefield, Texas, Claims Court Docket No. 89–39 V.
7. Angela Torres on Behalf of Alexandre Torres, Chicago, Illinois, Claims Court Docket No. 89–40 V.

Dated: May 1, 1989.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 89–10813 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–15–M

## National Institutes of Health

### National Cancer Institute; Clinical Trials Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Committee, National Cancer Institute, National Institutes of Health, June 1–2, 1989, Executive Plaza North, Conference Room J, 6120 Executive Boulevard, Bethesda, Maryland 20852.

This meeting will be open to the public on June 1 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 1 from 9:30 a.m. to recess and on June 2 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary (acting), Clinical Trials Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: April 27, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–10802 Filed 5–4–89; 8:45 am]

BILLING CODE 4140–01–M

### National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1989.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the reviews, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets for commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Office, NICHD, Executive Plaza North Building, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

*Name of Committee:* Population Research Committee
*Executive Secretary:* Dr. A.T. Gregoire, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696
*Date of Meeting:* June 19–20, 1989
*Place of Meeting:* Warwick Hotel, 4th Avenue & Lenora, Seattle, Washington
*Open:* June 19, 1989, 8:00 a.m.–9:00 a.m.
*Closed:* June 19, 1989, 9:00 a.m.–5:00 p.m.; June 20, 1989, 8:30 a.m.–adjournment

*Name of Committee:* Maternal and Child Health Research Committee
*Executive Secretary:* Dr. Scott Andres, Room 520, Executive Plaza North Building, Telephone: 301, 496–1485
*Date of Meeting:* June 27–28, 1989
*Place of Meeting:* American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, Maryland
*Open:* June 27, 1989, 8:30 a.m.–9:30 a.m.
*Closed:* June 27, 1989, 9:30 a.m.–5:00 p.m.; June 28, 1989, 8:00 a.m.–adjournment

*Name of Committee:* Mental Retardation Research Committee
*Executive Secretary:* Dr. Susan Streufert, Room 520, Executive Plaza North Building, Telephone: 301, 496–1696
*Date of Meeting:* June 28–29, 1989
*Place of Meeting:* Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland
*Open:* June 28, 1989, 7:00 p.m.–8:00 p.m.
*Closed:* June 28, 1989, 8:00 p.m.–11:00 p.m.; June 29, 1989, 8:00 a.m.–adjournment

(Catalog of Federal Domestic Assistance Programs No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: April 26, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89-10803 Filed 5-4-89; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Dental Research; Meeting of National Advisory Dental Research Council

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held June 13-14, 1989, Conference Room 10, Building 31, National Institues of Health, Bethesda, Maryland. This meeting will be open to the public from 9 a.m. to recess on June 13 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on June 14 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Preston A. Littleton, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301-496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845-Dental Research Institutes; National Institutes of Health)

Dated: April 26, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89-10804 Filed 5-4-89; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Dental Research; Meeting for Examination of Dental Research and Minority Group Oral Health Issues

Notice is hereby given of a meeting to be conducted by the National Institute of Dental Research (NIDR) for examination of major issues related to dental research and minority populations. These issues have emerged in the course of developing a new NIDR Long-Range Research Plan for the 1990s, and also in connection with plans to facilitate research, research training, and collaborative activities in specific areas.

Two issues will be considered. First, what are the particular oral health needs that should be addressed with regard to minority populations in the United States? How best can we address these research needs as well as facilitate science transfer and disease prevention efforts among minority groups? Second, how can we recruit more members of minority groups into the dental research community, as basic and clinical research investigators?

The meeting will be held on May 22, 1989, in Building 30, Room 117, National Institutes of Health, Bethesda, Maryland, from 9 a.m. to adjournment.

The meeting will be open to the public. However, attendance will be limited to space available.

For further information, contact Dr. James Lipton, Chief, Planning and Evaluation Section, Office of Planning, Evaluation, and Communications, NIDR, NIH, Room 2C-36, Building 31, 9000 Rockville Pike, Bethesda, MD, 20892 (telephone 301-496-6705).

Dated: April 27, 1989.

**James B. Wyngaarden,**

*Director, NIH.*

[FR Doc. 89-10805 Filed 5-4-89; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on May 31 and June 1, 1989, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public May 31 from 8:30 a.m. to 12 noon and again on June 1 from 1 p.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on May 31 from 1 p.m. to recess: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on June 1 from 8:30 a.m. to approximately 12 noon.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.847-849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: April 27, 1989.

**Betty J. Beveridge,**

*NIH Committee Management Officer.*

[FR Doc. 89-10806 Filed 5-4-89; 8:45 am]

BILLING CODE 4140-01-M

## National Institute of Environmental Health Science; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, May 22-23, 1989, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on May 22 from 9 a.m. to approximately 2:30 p.m. for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public May 22, from approximately 3 p.m. to adjournment on May 23, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, FTS 629–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Diometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: April 27, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH*

[FR Doc. 89–10807 Filed 5–4–89; 8:45am]

BILLING CODE 4140–01–M

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## National Library of Medicine, Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on June 8–9, 1989, convening at 9:00 a.m. on June 8 and at 8:30 a.m. on June 9 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 8 will be open to the public from 9:00 a.m. to 12:30 p.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on June 8 from approximately 12:30 to 5:00 p.m. and on June 9 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: April 27, 1989.

**Betty J. Beveridge,**

*Committee Management Office, NIH.*

[FR Doc. 89–10808 Filed 5–4–89; 8:45 am]

BILLING CODE 4140–01–M

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## National Library of Medicine; Meetings of the Board of Regents and Subcommittees

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on June 6–7, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland. The Subcommittees will meet on June 5 as follows:

Lister Hill Center Subcommittee, 7th-floor Conference Room, Building 38A, 1 p.m. to 2 p.m.; Pricing Subcommittee, Conference Room A, Mezzanine, Building 38, 1 p.m. to 2 p.m.; Extramural Programs Subcommittee, 5th-floor Conference Room, Building 38A, 2 p.m. to 3:30 p.m.; Planning Subcommittee, Conference Room A, Mezzanine, Building 38, 4 p.m. to 5 p.m. All, but the Extramural Programs Subcommittee, will be open to the public.

The meeting of the Board will be open to the public from 9 a.m. to approximately 5 p.m. on June 6 and from 9 a.m. to approximately 10:30 a.m. on June 7 for administrative reports and program discussions. Attendance will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on June 5 will be closed to the public, and the regular Board meeting on June 7 will be closed from approximately 10:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: April 26, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–10809 Filed 5–4–89; 8:45 am]

BILLING CODE 4140–01–M

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## National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 14–15, 1989, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 13 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 14 will be open to the public from 8:30 to approximately 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the regular

meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 14 from approximately 11:00 a.m. to 5 p.m., and on June 15, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 13 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: April 26, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–10810 Filed 5–4–89; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the Committees of the National Institute of Neurological Disorders and Stroke.

These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications.These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological Disorders and Stroke Council and Its Planning Subcommittee

*Date:* May 31, 1989 (Planning Subcommittee)

*Place:* National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892

*Open:* 1 p.m.–3 p.m.

*Closed:* 3 p.m.–5 p.m.

*Dates:* June 1–2, 1989 (Council)

*Place:* National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892

*Open:* June 1, 9 a.m.–1 p.m.

*Closed:* June 1, 1 p.m.–recess; June 2, 8:30 a.m.–adjournment

*Executive Secretary:* John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248

Name of Committee: Neurological Disorders Program Project Review B Committee.

*Dates:* May 31, 1989 (Planning Subcommittee)

*Place:* National Institutes of Health, Building 31, Conference Room 8A28, 9000 Rockville Pike, Bethesda, Maryland 20892

*Open:* 1 p.m.–3 p.m.

*Closed:* 3 p.m.–5 p.m.

*Dates:* June 1–2, 1989 (Council)

*Place:* National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892

*Open:* June 1, 9 a.m.–1 p.m.

*Closed:* June 1, 1 p.m.–recess; June 2, 8:30 a.m.-adjournment

*Executive Secretary:* John C. Dalton, Ph.D, Associate Director for Extramural Activities, NINDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248

Name of Committee: Neurological Disorders Program Project Review B Committee

*Dates:* June 12–14, 1989

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910

*Open:* June 12, 8 a.m.–8:30 a.m.

*Closed:* June 12, 8:30 a.m.–recess; June 13, 8 a.m.–recess;

June 14, 8 a.m.–adjournment

*Executive Secretary:* Dr. A. Beau White, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

Name of Committee: Neurological Disorders Program Project Review A Committee

*Dates:* June 22–24, 1989

*Place:* Bethesda Hyatt Regency, One Metro Center, Bethesda, Maryland 20814

*Open:* June 22, 8a.m.–8:30 a.m.

*Closed:* June 12, 8:30 a.m.-8:30 a.m., June 13, 8 a.m.—recess;

*June 22, 8:30–recess; June 23, 8 a.m.–recess; June 24, 8 a.m.–adjournment*

*Executive Secretary:* Dr. Herbert Yellin, Federal Building, Room 9C–14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9223

(Catalog of Federal Domestic Assistance Program No. 13.863, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: April 27, 1989.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 89–10811 Filed 5–4–89; 8:45 am

BILLING CODE 4140–01–M

## Public Health Service

## Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, April 28, 1989.

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

1. Clinical, Laboratory and Epidemiologic Characterization of Individuals at High Risk of Cancer—0925–0194—This submission will reinstate approval for clinical, laboratory and epidemiologic study of individuals in cancer-prone families. The study is necessary to identify and describe the distribution and determinants of cancer in high-risk populations. A self-administered questionnaire is mailed to individuals in families in which there is cancer of an unusual type, pattern, number, or known or suspected factors predisposing to cancer, genetic, and/or congenital factors, or benign conditions predisposing to cancer. *Respondents:* Individuals or households; *Number of Respondents:* 600; *Number of Responses per Respondent:* 1; *Average Burden per*

*Response:* .75 hours; *Estimated Annual Burden:* 450 hours.

2. Indian Health Service (IHS) Hospital, Dental and Other Contract Health Service Reports—0917–0002—These forms provide a description of the patient's diagnosis, procedures performed, health care services provided and fee charged to IHS. The forms serve as a legal document for health care rendered and are used for billing purposes. They are also a basis for annual statistics on the provision of program health services. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions and small businesses or organizations.

| | No. of Respondents | No. of Hours Per Response | No. of Responses Per Respondent |
|---|---|---|---|
| Hospital Inpatient Report | 150 | .17 hrs. | 333 |
| Dental Report | 700 | .17 hrs. | 50 |
| Other Than Hospital/Dental | 1,500 | .17 hrs. | 170 |

*Estimated Annual Burden:* 57,800 hours

3. AIDS Demonstration Projects Reporting System—New—AIDS Service Demonstration Grants have been awarded, by the Health Resources and Services Administration, in areas with the highest incidence of AIDS to organize and coordinate care for people with HIV infection. Information provided semi-annually by grantees will be used to monitor performance and to respond to congressional inquiries. *Respondents:* State or local governments and non-profit institutions; *Number of Respondents:* 21; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 8 hours; *Estimated Annual Burden:* 336 hours.

*OMB Desk Officer:* Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: May 1, 1989.

**James M. Friedman,**

*Acting Deputy Assistant Secretary for Health (Planning and Evaluation).*

[FR Doc. 89–10891 Filed 5–4–89; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Boundaries of the Hoopa Valley Reservation and Yurok Reservation

March 3, 1989.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Secretary of the Interior is required, pursuant to section 2(d)(2) of the Hoopa-Yurok Settlement Act of October 31, 1988, Pub. L. 100–580, 102 Stat. 2924, to publish in the **Federal Register** a description of the boundaries of the Hoopa Valley Reservation and Yurok Reservation.

**DATE:** The Hoopa-Yurok Settlement Act requires that a description of the boundaries of the two reservations be published in the **Federal Register** upon the partition of the joint reservation. Under the Hoopa-Yurok Settlement Act, such partition became effective with the publication in the **Federal Register** of the Hoopa tribal resolution required under section 2(a)(2) of the Act. Such a resolution was published in the **Federal Register** on Wednesday, December 7, 1988, 53 F.R. 49361.

**FOR FURTHER INFORMATION CONTACT:** Carmen Facio, Sacramento Area Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825, telephone number: (916) 978–4697.

**SUPPLEMENTARY INFORMATION:** This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.1. As required by section 2(d)(2) of the Hoopa-Yurok Settlement Act, the following is a description of the boundaries of the Hoopa Valley Reservation and the Yurok Reservation.

#### The Hoopa Valley Reservation

The area of land known as the "Square" defined as the Hoopa Valley Reservation, established under section 2, of the Act of April 8, 1864 (13 Stat. 39), the Executive Order of June 23, 1876, and Executive Order 1480 of February 17, 1912, constitutes the Hoopa Valley Reservation. The exterior boundaries of the Hoopa Valley Reservation are defined by field notes of survey and the plat of the Hoopa Valley Indian Reservation, as surveyed under instruction by the Office of the U.S. Surveyor General and approved on July 19, 1888, and the plat of dependent resurey approved July 8, 1977, all within Township 7 North, Ranges 4 and 5 East; Township 8 North, Ranges 3, 4, 5 and 6 East; Township 9 North, Ranges 3, 4, and 5 East; Township 10 North, Range 5 East, Humboldt Meridian, Humboldt County, California. The Smith-Bissell Survey, approved July 19, 1888, shall be recognized for purposes of establishing the common boundary between the Yurok and Hoopa Valley Reservations.

#### The Yurok Reservation

The area of land known as the "Extension" defined as the Reservation Extension under the Executive Order of October 16, 1891, to include a tract of country one mile in width on each side of the Klamath River and extending from the limits of the Hoopa Valley Reservation to the Pacific Ocean, excluding the Resighini Rancheria as provided in section 11 paragraph (b) of the Act of October 31, 1988 (Pub. L. 100–580), constitutes the Yurok Reservation. The exterior boundaries of the Yurok Reservation are defined, in part, by field notes of survey and plats as surveyed by the General Land Office, including but not limited to those plats approved April 8, 1904, all within Township 9 North, Ranges 3 and 4 East; Township 10 North, Ranges 3 and 4 East; Township 11 North, Ranges 2 and 3 East; Townmship 12 North, Range 2 East: Township 13 North, Range 2 East; Township 14 North, Range 1 East; and those plats approved April 8, 1929, January 29, 1931, and July 1, 1931, all within Township 9 North, Range 4 East and those dated August 26, 1905, all within Township 13 North, Range 1 East, Humboldt Meridian, Humboldt County, California. The Smith-Bissell Survey approved on July 19, 1888, shall be recognized for purposes of establishing the common boundary between the Yurok and Hoopa Valley Reservations. All aforesaid plats are on file with the United States Department of the Interior, Bureau of Land Management,

2800 Cottage Way, Sacramento, California.

**W.P. Ragsdale,**

*Acting Assistant Secretary, Indian Affairs.*

[FR Doc. 89-10942 Filed 5-4-89; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

**[MT-060-09-4212-13; MTM-76695]**

## Realty Action—Exchange; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action MTM-76695, exchange of public and private lands in Teton, Fergus, Chouteau, Blaine, Hill, Judith Basin, Petroleum Counties.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716. Only sufficient public lands that equal the same monetary value as the private lands will be used in this exchange. The remaining public lands will be made available for other land exchanges.

**Principal Meridian Montana**

T. 12 N., R. 23 E.,
Section 14, NE¼;
Section 28, SE¼NE¼;
Section 29, NE¼NE¼, W½SW¼, SE¼SW¼, SW¼SE¼;
Section 32, W½NW¼, NW¼SW¼; SW¼SE¼;
Section 34, NW¼SE¼.
T. 12 N., R. 24 E.,
Section 4, SW¼SW¼;
Section 5 SE¼SE¼;
Section 9, SE¼SW¼, S½SE¼;
Section 10, SE¼SW¼, NW¼SE¼, SE¼SE¼;
Section 11, SE¼NE¼, S½S½;
Section 12, NW¼, W½SW¼, NE¼SW¼;
Section 13, SW¼SW¼;
Section 14, NW¼NE¼, N½NW¼;
Section 15, NE¼NE¼;
Section 23, SE¼SE¼;
Section 26, E.
T. 12 N., R. 25 E.,
Section 29, S½NW¼, SW¼;
Section 30 Lots 1–4, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼;
Section 31, E½;
Section 32, N½NW¼, S½SW¼.
T. 13 N., R. 21 E.,
Section 34, SW¼NW¼, N½SW¼;
Section 35, W½NW¼.
T. 13 N., R. 22 E.,
Section 12, Lots 3–4, SE¼SW¼, W½SE¼;
Section 13, Lots 1–3, W½NE¼, E½NW¼, SW¼NE¼;
Section 23, S½NE¼, SE¼NE¼;
Section 24, SW¼NE¼;
Section 26, SW¼NE¼.
T. 13 N., R. 23 E.,
Section 6, SE¼SW¼, SW¼SE¼;
Section 7, Lots 1–2, NW¼NE¼, NE¼NW¼;
Section 25, S½NW¼, W½SW¼, NE¼SW¼;
Section 26, E½SE¼, NW¼SE¼;
Section 26, E½SE¼, NW¼SE¼.
T. 14 N., R. 20 E.,
Section 7, E½SW¼, SW¼SE¼;
Section 18, NE¼NW¼.
T. 14 N., R. 21 E.,
Section 12, SE¼.
T. 14 N., R. 23 E.,
Section 21, SE¼;
Section 28, N½NE¼.
T. 14 N., R. 23 E.,
Section 17, SE¼SW¼, S½SE¼.
T. 15 N., R. 26 E.,
Section 3, SW¼SE¼.
T. 16 N., R. 14 E.,
Section 14, NE¼SE¼.
T. 16 N., R. 18 E.,
Section 4, Lot 1.
T. 17 N., R. 14 E.,
Section 13, S½SE¼.
Section 24, NE¼SW¼.
T. 18 N., R. 20 E.,
Section 12, E½NE¼, NW¼NE¼, NE¼NW¼, E½SW¼, SE¼.
T. 18 N., R. 25 E.,
Section 14, S½S½;
Section 15, SE¼NE¼, NW¼NW¼, SE¼NW¼, SE¼.
T. 18 N., R. 25 E.,
Section 24, N½SW¼.
T. 18 N., R. 26 E.,
Section 19, E½SW¼, NW¼SE¼.
T. 19 N., R. 10 E.,
Section 15, SW¼NE¼, NE¼NW¼, SE¼NW¼.
T. 19 N., R. 11 E.,
Section 28, NE¼NE¼;
Section 33, SE¼NW¼;
Section 34, SE¼NE¼;
Section 35, SE¼NE¼.
T. 19 N., R. 20 E.,
Section 34, NE¼ E¼, N½SE¼.
T. 19 N., R. 22 E.,
Section 9, N½N½.
T. 19 N., R. 23 E.,
Section 3, Lot 2, NW¼SW¼.
T. 21 N., R. 9 E.,
Section 20 SW¼NE¼, E½NW¼, N½S½.
T. 22 N., R. 14 E.,
Section 6, Lots 1–5, S½NE¼, SE¼NW¼.
T. 22 N., R. 19 E.,
Section 28, E½SW¼;
Section 33, E½NE¼, NW¼NE¼, NE¼NW¼.
T. 23 N., R. 14 E.,
Section 31, SE¼SW¼, SE¼.
T. 23 N., R. 15 E.,
Section 13, NW¼SW¼;
Section 14, NE¼.
T. 23 N., R. 16 E.,
Section 5, Lot 2, S½N½, NE¼SW¼, NW¼SE¼.
T.$ N., R. 7 E.,
Section 2, SE¼SE¼;
Section 4, SW¼NE¼, SE¼NW¼, SW¼SW¼.
T. 24N., R. 9 E.,
Section 19, Lot 4, SW¼SE¼;
Section 30, NE¼SW¼.
T. 24 N., R. 10 E.,
Section 20, NE¼SE¼.
T. 25 N., R. 7 E., 24
Section 34, NE¼NW¼.
T. 25 N., R. 10 E.,
Section 5, SW¼NE¼;
Section 34, NE¼SW¼.
T. 26 N., R. 16 E.,
Section 34, SE¼NE¼.
T. 26 N., R. 17E.,
Section 12, N¼NW¼;
Section 13, SE¼SW¼;
Section 32, SW¼NE¼, S½SE¼.
T. 26 N., R. 18 E.,
Section 3, Lot 4;
Section 9, NE¼SW¼;
Section 18, SE¼SW¼;
Section 19, SE¼ME¼;
Section 20, NW¼NW¼.
T. 27 N., R. 18 E.,
Section 25, SE¼SE¼;
Section 34, SW¼SE¼.
T. 28 N., R. 13 E.,
Section 34, SE¼SW¼.
T. 29 N., R. 17 E.,
Section 8, Lot 2.
T. 31 N., R. 12 E.,
Section 9, W½SE¼.
T. 32 N., R. 21 E.,
Section 13, NE¼SW¼, NW¼SE¼.
T. 34 N., R. 22 E.,
Section 24, E½;
Section 26, NW¼, N½SW¼.
T. 34 N., R. 23 E.,
Section 11, SW¼NE¼, SW¼NW¼, N½SW¼, W½SE¼;
Section 14, N½NE¼;
Section 15, N½NW¼.
T. 34 N., R. 25 E.,
Section 4, Lot 2;
Section 9, SE¼NE¼, E½SE¼;
Section 10, W½W½.
T. 35 N., R. 25 E.,
Section 34, NW¼NW¼.
T. 36 N., R. 22 E.,
Section 14, SE¼NE¼.
T. 36 N., R. 24 E.,
Section 14, N½NW¼, SW¼NW¼.
T. 37 N., R. 15 E.,
Section 28, W½SW¼.
T. 37 R., R. 17 E.,
Section 12, SW¼SW¼.

Aggregating 11,715.59 acres of public lands.

As needed the United States will exchange these lands to acquire the following described private lands:

**Principal Meridian Montana**

T. 22 N., R 8 W.,
Section 13, SW¼NE¼, S½SW¼, SW¼, W½SE¼;
Section 14, S½N½, N½SW¼, SW¼SW¼;
Section 15, All;
Section 21, E½NE¼, NE¼SE¼;
Section 22, N½NE¼, SW¼NE¼, NW¼;
Section 23, NW¼NW¼;
Section 24, W½NE¼, SE¼NE¼, NW¼ SE¼.

Aggregating 1,880.00 acres of private lands.

**DATES:** For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action. In the absence

of any objections this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** Information related to the exchange, including the environmental assessment and land report, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

**SUPPLEMENTARY INFORMATION:** The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976 for a period of two years from date of first publication.

This exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the Federal lands being transferred.

3. All valid existing rights for the following rights-of-way of record: Mid Rivers Telephone Coop, MTM–049342 and MTM–71371; Fergus Electric Coop, MTM–58077; Fergus County Commissioners, MTM–044768, MTM–45665 and MTM–044752; Montana Highway Commission, MTM–019818, MTM–048132, and MTM–044769; Big Flat Electric, MTM–57527; and Triangle Telephone Coop, MTM–59069.

4. Value equalization by cash payments or acreage adjustments. The cash payment or acreage adjustment will be kept to the bare minimum.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. The public interest will be served by completion of this exchange through acquisition of important mule deer winter ranges; bighorn sheep winter range and lambing area; fisheries and wildlife habitat. Scattered parcels of public land which contain no sufficient or unusual resources, and which are difficult to manage, will be disposed of.

Dated: April 27, 1989.

Wayne Zinne,

*District Manager.*

[FR Doc. 89–10832 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–DN–M

**[MT–930–09–4214–11; MTM 043418, MTM 063641]**

## Proposed Modification of Public Land Orders 2336, 3635, and 3723; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Corps of Engineers, Department of the Army, proposes that the withdrawal of 62.50 acres of land for Malmstrom Air Force Base continue until such time that the lands are no longer needed by the U.S. Air Force. The lands are now being used for military purposes for the Department of the Air Force. A 2.14 acre portion will remain closed to surface entry, mining, mineral leasing, and disposal of materials, and the remaining 60.36 acres will remain closed to surface entry and mining.

**DATE:** Comments should be received by August 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

The Corps of Engineers proposes that the existing withdrawals made by PLO 2336, PLO 3635, and PLO 3723 be continued in their entirety until such time that they are no longer needed by the U.S. Air Force. The lands are described as follows:

**Principal Meridian**

MTM 043418 (PLO 2336)

T. 16 N., R. 23 E.,

Sec. 10, SW¼NW¼, an area described as follows:

Beginning at a point which bears North 15°08'14" East 2941.70 feet from the southwest corner of said Section 10;
Thence North 0°34'04" East 155.00 feet;
Thence South 89°25'56" East 260.00 feet,
Thence South 0°34'04" West 357.02 feet to a point on the South line of the northwest quarter of said section 10;
Thence westerly along said South line 260.01 feet;
Thence North 0°34'04" East 204.60 feet to the point of beginning.

MTM 063641 (PLOs 3635 and 3723)

T. 16 N., R. 23 E.,

Sec. 10, SW¼NW¼, NW¼NE¼SW¼, W½NE¼NE¼SW¼, W½SW¼NE¼SW¼, and NE¼SW¼NE¼SW¼.

The areas described aggregate 62.50 acres in Fergus County.

The withdrawal made by PLO 2336 segregates the land from settlement, sale, location or entry under the general land laws, including the United States mining and mineral leasing laws, and disposal of materials under the Act of July 31, 1947 (30 U.S.C. 601–604), as amended.

The withdrawal made by PLO 3635 and PLO 3723 segregates land from settlement, sale, location or entry under the general land laws, including the United States mining laws (30 U.S.C., Ch. 2), but not from leasing under mineral leasing laws.

No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, at the address listed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

**John A. Kwaitkowski,**

*Deputy State Director, Division of Lands and Renewable Resources.*

April 27, 1989.

[FR Doc. 89–10738 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–DN–M

## Minerals Management Service

## Pacific OCS Region Information Transfer Meeting

**AGENCY:** Minerals Management Service, POCS, DOI.

**ACTION:** Announcing public meeting, "Information Transfer Meeting."

**SUMMARY:** The Pacific OCS Region Information Transfer Meeting (ITM) is scheduled for May 31–June 1, 1989 at the Red Lion Inn in Santa Barbara, California. The theme for the ITM this year is "Offshore Oil and Gas: Risks and Benefits." On the first day, presentation will be made by scientists doing research into potential effects of oil and gas activities on the human and marine environments. The second day will provide a forum for presentation of perceptions of risks and benefits by conservation and industry groups, local state and federal agencies.

*Time and Location of ITM:* 8:30 a.m.–4:30 p.m., Wednesday May 31, 1989 and Thursday June 1, 1989; Santa Ynez

Room, Red Lion Inn, 633 East Cabrillo Blvd., Santa Barbara, California. (805) 564–4333. Hotel reservations should be made by May 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mary Elaine Dunaway, Minerals Management Service, Pacific OCS Region, 1340 West 6th Street, Los Angeles, California 90017, (213) 894–4480 or Kathy Mitchell, MBC Applied Environmental Sciences, Inc. at (714) 646–1601.

Dated: May 1, 1989.

**J. Lisle Reed,**

*Regional Director, Pacific OCS Region.*

[FR Doc. 89–10796 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; Century Offshore Management Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Century Offshore Management Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6840, Block 24, Chandeleur Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 27, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 28, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–10830 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–MR–M

## Development Operations Coordination Document; Forest Oil Corp.

**AGENCY:** Minerals Management Service, Interiors.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Forest Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 5517 and 5518, Blocks 325 and 326, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 27, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday though Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD's available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: April 28, 1989.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 89–10831 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–MR–M

## National Park Service

### Concession Contract Negotiations With the Oglala Sioux Tribe

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** Public notice is hereby given that the National Park Service proposes to negotiate a concession contract with the Oglala Sioux Tribe By and Through the Oglala Sioux Parks and Recreation Authority authorizing it to continue to provide food service, lodging, gift shop and merchandising facilities and services for the public at Cedar Pass Lodge, Badlands National Park, South Dakota for a period of Ten (10) Years from November 1, 1989, through October 31, 1999.

**EFFECTIVE DATE:** July 5, 1989.

**ADDRESS:** Interested parties should contact the Regional Director, Rocky Mountain Region, P.O. Box 25287, Denver, Colorado 80225–0287, for information as to the requirements of the proposed contract.

**SUPPLEMENTARY INFORMATION:** This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the Cedar Pass Development Concept Plan of June 1980 and an Interim Operations Plan of May 1986.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, Badlands National Park, South Dakota.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on October 31, 1989, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

**Jack W. Neckels,**

*Acting Regional Director, Rocky Mountain Region.*

Date: April 10, 1989

[FR Doc. 89–10759 Filed 5–4–89; 8:45 am]

BILLING CODE 4310–70–M

### U.S. World Heritage Nomination Process; Calendar Year 1989

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Public notice and request for comment.

**SUMMARY:** The Department of the Interior, through the National Park Service, announces the process that will be used in calendar year 1989 to identify possible U.S. nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future U.S. World Heritage Nominations, and solicits public comments and suggestions on properties that should be considered as potential U.S. World Heritage nominations this year. This notice identifies the requirements that U.S. properties must satisfy to be considered for nomination, and references the rules that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criteria which cultural or natural properties must satisfy for World Heritage status, and lists the 17 U.S. properties inscribed on the World Heritage List as of January 1, 1989.

**DATES:** Comments or suggestions of cultural properties as potential 1990 U.S. World Heritage nominations must be received within 60 days of this notice. Comments should pertain to the merits of properties included on the Inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1989. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the **Federal Register**, with a request for further public comment in the event that potential nominations are identified. Comments on potential United States nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of Interior will subsequently publish in the **Federal Register** a final list of proposed 1990 U.S. World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November, the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1990 United States nominations, and will make recommendations to the Department of the Interior. The Assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1989, for evaluation by the World Heritage Committee.

**ADDRESS:** Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Attention: World Heritage Convention–023.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127 (202/343–7063).

**SUPPLEMENTARY INFORMATION:** The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 105 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultual properties of outsanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in idenfifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470 a–1, a–2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

**I. Potential U.S. World Heritage Nominations**

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the U.S. World Heritage Indicative Inventory which follows, or other qualified property, relates to and satisfies one or more of the World Heritage criteria (Section II of this notice). In order for a U.S. property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier, i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment. Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properties were published in the **Federal Register** on May 6, 1982, as the Inventory of Potential Future U.S. World Heritage Nominations (47 FR 19648) and amended in (48 FR 38100). The Inventory discusses briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. The properties included in the Inventory, minus properties nominated in intervening years, are as follows:

*Natural*

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge, Alaska
Arches National Park, Utah
Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of the Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Rainier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildlife Refuge, Georgia-Florida
Organ Pipe Cactus National Monument/ Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Monument, Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia/Kings Canyon National Park, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

*Cultural*

Aleutian Islands Unit of the Alaska Maritime National Wildlife Refuge (Fur Seal Rookeries), Alaska
Auditorium Building, Illinois—Chicago
Bell Telephone Laboratories, New York—New York City
Brooklyn Bridge, Brooklyn, New York
Cape Krusenstern Archaeological District, Kotzebue, Alaska
Carson, Pirie, Scott and Company Store, Chicago, Illinois
Casa Grande National Monument, Coolidge, Arizona
Chapel Hall, Gallaudet College, District of Columbia
Eads Bridge, Illinois-Missouri
Fallingwater, Mill Run, Pennsylvania
Frank Lloyd Wright Home and Studio, Oak Par, Illinois
General Electric Research Laboratory, Schenectady, New York
Goddard Rocket Launching Site, Auburn, Massaschusetts
Hohokam Pima National Monument, Arizona
Leiter II Building, Chicago, Illinois
Lindenmeier Site, Colorado
Lowell Observatory, Flagstaff, Arizona
Marquette Building, Chicago, Illinois
McCormick Farm and Workshop, Walnut Grove, Virginia
Mound City Group National Monument, Ohio
Moundville Site, Alabama
New Harmony Historic District, New Harmony, Indiana
Ocmulgee National Monument, New Mexico
Poverty Point, Bayou Macon, Louisiana
Prudential (Guaranty) Building, Buffalo, New York
Pupin Physics Laboratories, Columbia University, New York

Reliance Building, Chicago, Illinois
Robie House, Chicago, Illinois
Rookery Building, Chicago, Illinois
San Xavier Del Bac, Tucson, Arizona
Savannah Historic District
South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois
Taliesin, Spring Green, Wisconsin
Trinity Site, Bingham, New Mexico
Unity Temple, Oak Park, Illinois
Ventana Cave, Arizona
Wainwright Building, St. Louis, Missouri
Warm Springs Historic District, Georgia
Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, **Federal Register** notice (47 FR 19648), which includes a description of the properties on the U.S. World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

**II. World Heritage Criteria**

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

*A. Criteria for the Inclusion of Cultural Properties on the World Heritage List*

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or town planning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside othe country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

*(B) Criteria for the Inclusion of Natural Properties on the World Heritage List*

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing the major stages of the earth's evolutionary history; or

(ii) Be outstanding examples representing significant ongoing geological processes, biological evolution, and man's interaction with his natural environment; as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) Contain superlative natural phenomena, formations or features, for instance, outstanding examples of the most important ecosystems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The sites described in (iii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes/objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

**III. World Heritage List**

As of January 1, 1989, the World Heritage Committee had approved the following 17 cultural and natural properties in the United States for inscription on the World Heritage List. (The World Heritage List currently includes 315 properties worldwide.)

Cahokia Mounds State Historic Site
Chaco Culture Sites
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Hawaii Volcanoes National Park
Independence Hall
Mammoth Cave National Park

Mesa Verde National Park
Monticello/University of Virginia; Jeffersonian Precinct
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statue of Liberty
Wrangell-St. Elias National Park
Yellowstone National Park
Yosemite National Park

Dated: April 27, 1989.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89-10867 Filed 5-4-89; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporations and address of principal office. Fleming Companies, Inc., 6301 Waterford Blvd. Oklahoma City, OK 73126.

2. Wholly-owned subsidiaries and divisions which will participate in compensated intercorporate hauling:

| Legal entity | State of incorporation |
|---|---|
| (A). Fleming Companies, Inc. | Oklahoma. |
| (B). Godfrey Co | Wisconsin. |
| (C). Hub City Foods, Inc | Wisconsin. |
| (D). Fleming Foods of Texas, Inc. | Texas. |
| (E). Fleming Foods of Alabama, Inc. | Alabama. |
| (F). Fleming Foods of Virginia, Inc | Virginia. |
| (G). Fleming Foods of Tennessee, Inc. | Tennessee. |
| (H). Fleming Foods of Pennsylvania, Inc. | Pennsylvania. |
| (I). Royal Food Distributors, Inc | New Jersey. |
| (J). Thrift Rack, Inc | Pennsylvania. |
| (K). Fleming Foods of Ohio, Inc | Ohio. |
| (L). Fleming Foods West, Inc | California. |
| (M). Fleming Transportation Service, Inc. | Oklahoma. |
| (N). Malone & Hyde, Inc | Delaware. |
| (O). Malone & Hyde of Lafayette, Inc | Louisiana. |

1. Parent corporation and address of principal office: Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63137.

2. Wholly owned subsidiaries which will participate in the operations and, states of incorporation:

a. Fisher Controls Company: State of Incorporation—Delaware.

b. Fovil Manufacutring Company, Inc.: State of Incorporation—Delaware.

c. NutraSweet Company: State of Incorporation—Delaware.

d. Leonard Construction Company: State of Incorporation—Delaware.

e. G.D. Searle and Company: State of Incorporation—Delaware.

f. Monsanto Canada, Inc.: Incorporated in Country of Canada.

g. Monsanto Enviro-chem Systems, Inc.: State of Incorporation—Delaware.

h. Olympia Industries: State of Incorporation—Delaware.

i. Plax, Inc.: State of Incorporation—Delaware.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-10682 Filed 5-4-89; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30098]

### Puerto Rico Freight System, Inc. v. Trailer Marine Transport Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of reopening and request for comments.

**SUMMARY:** The Commission is seeking comments from interested persons concerning its jurisdiction to regulate detention charges assessed in Puerto Rico pursuant to joint water-motor tariffs filed with the Commission under 49 U.S.C. 10703(a)(4)(a) and *Puerto Rico Maritime Shipping Authority v. ICC,* 645 F.2d 1102 (D.C. Cir. 1981). The Commission is taking this action as a result of a complaint filed in this proceeding by a consignee in Puerto Rico against a carrier participating in such a joint motor-water tariff. The complaint, which concerns detention charges assessed against that consignee pursuant to that tariff, raises threshold jurisdictional issues involving Puerto Rico's status under the Interstate Commerce Act (ICA). The Commission will consider comments from interested persons before making any further determination on its jurisdiction to regulate detention charges assessed in Puerto Rico.

**DATES:** Comments from interested persons are due by July 5, 1989. Replies are due by July 25, 1989.

**ADDRESSES:** An original and 10 copies of comments referring to docket No. MC-C-30098 should be sent to: Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission, Washington, DC 20423.

A copy of any comments filed with the Commission must also be served on complainant's and defendant's representatives:

Rick A. Rude, Suite 300, 100 N. Washington, Street, Falls Church, VA 22046.

and

William H. Fort, 1401 New York Ave., NW., Suite 1200, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:**

Paul Grossman, (202) 275-7976

or

Richard B. Felder, (202) 275-7691

[TDD for hearing impaired: (202) 275-1721.]

**SUPPLEMENTARY INFORMATION:** Puerto Rico Freight System, Inc. has filed a complaint against Trailer Marine Transport Corporation, an ocean carrier. Complainant is a warehouseman, shipper's agent and freight consolidator/distributor in Puerto Rico. The complaint involves detention charges that defendant assessed against complainant pursuant to Item 165 of its tariff ICC TMT 2018. This is a joint motor-water tariff applicable, as pertinent here, to traffic moving from inland points on the United States mainland to ports in Puerto Rico. After its vessel arrived in port, defendant released its trailers containing complainant's goods to a local drayage carrier, who moved the trailers from the port to complainant's facility, and then returned them to defendant. Under Item 165, after an initial free time, detention charges began to accrue and continued until the trailer was returned to defendant's terminal. Depending on how quickly a trailer is moved, detention charges may begin to accrue while the trailer is in transit to complainant's facility, while it is being unloaded at complainant's facility, or while it is moving back from complainant's facility to the port. The drayage carrier that handles the trailer in Puerto Rico is regulated by the Puerto Rico Public Service Commission (PRPSC).

Complainant argues that the detention matters are solely within Puerto Rico's jurisdiction. Defendant argues that this Commission has jurisdiction. By decision served December 5, 1988, we concluded that the Commission did not have jurisdiction over the involved detention charges because, under 49 U.S.C. 751, the provisions of the ICA do not apply to Puerto Rico. Accordingly, we dismissed the complaint.

On December 27, 1988, defendant filed a petition to reopen the proceeding. Among other things, defendant argues that "should the decision stand, it may require significant changes in the way * * * carriers [handling cargo under

joint motor-water rates from the mainland United States to Puerto Rico ports] do business in Puerto Rico."

In view of the potential importance of this issue and our resolution of it to carriers offering such service, we are reopening the proceeding to solicit comments from interested persons on the jurisdictional issue. We specifically solicit comments from other carriers involved in the transportation of cargo moving from the mainland United States to Puerto Rico under joint motor-water rates, and from PRPSC (who will be served with a copy of this notice). Complainant's and defendant's previously filed pleadings will be considered as comments here to the extent relevant.

We specifically seek comments on the following issues: (1) The applicability of 48 U.S.C. 751 to the facts presented in this case; (2) the effect of 49 U.S.C. 10521(a)(1)(c) ("the limitation clause"); (3) whether a subsequent movement of a carrier's equipment beyond the boundary of the Puerto Rican port area by the consignee or its agent can defeat the applicability of that portion of a joint rate establishing detention charges at the port; (4) whether, in the absence of Commission regulation, such charges would be unregulated or be regulated by PRPSC; (5) whether the Commission should be involved in disputes between consignees and ocean carriers that arise as a result of transactions between Puerto Rican consignees and their PRPSC regulated draymen; (6) whether fault is or should be relevant in determining the jurisdictional issue (*i.e.*, whether the charges accrue due to the drayman's delay or the consignee's delay); and (7) the potential impact (including practical difficulties if any) on carriers and consignees of a Commission decision to accept or decline jurisdiction.

After the close of the comment period, the Commission will issue a decision on the jurisdictional issue. If the Commission determines that it does not have jurisdiction, the complaint will be dismissed. If the Commission determines that it has jurisdiction, further evidence will be invited on the remaining issues.

No Commission decision accompanies this notice. Copies of the pleadings are available for public inspection and copying at the Office of the Secretary, Rm. 1221, Interstate Commerce Commission, Washington, DC 20423, and from the parties' representatives at the addresses listed above.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Authority:** 49 U.S.C. 10321 and 10703 and 5 U.S.C. 553.

*It is ordered:*

1. This proceeding is reopened.

2. The filing of verified statements by complainant and defendant, and all discovery matters, are held in abeyance pending resolution of the juridictional issue.

3. A copy of this notice will be served upon the Puerto Rico Public Service Commission, and its comments are invited.

*Decided:* April 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-10834 Filed 5-4-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

#### New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

*Volume I*

Alabama:
AL89-31—pp. 60c-60d

*Volume II*

Minnesota:
MN89-16—pp. 626c-626d

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut:
CT89-1 (Jan. 6, 1989)—pp. 62-63, pp. 65-66
Delaware:
DE89-2 (Jan. 6, 1989)—p. 94
Maryland:
MD89-5 (Jan. 6, 1989)— pp. 427-428
New Hampshire
NH89-2 (Jan 6, 1989)—p. 592
Tennessee:
TN89-4 (Jan. 6, 1989)—pp. 1089-1093
Listing by Location (index)—pp. xx, xxviii
Listing by Decision (index)—pp. xlvii-xlviii

*Volume II*

Iowa:
IA89-1 (Jan. 6, 1989)—pp. 21-26
Indiana:
IN89-3 (Jan. 6, 1989)—p.278
Nebraska:
NE89-4 (Jan. 6, 1989)—p. 728
Oklahoma:
OK89-13 (Jan. 6, 1989)—pp. 942-943
OK89-14 (Jan. 6, 1989)—pp. 953-95 4
OK89-15 (Jan. 6, 1989)—p. 962
OK89-16 (Jan. 6, 1989)—p. 964
OK89-17 (Jan. 6, 1989)—p. 968
OK89-20 (Jan. 6, 1989)—p. 976
Wisconsin:
WI89-1 (Jan. 6, 1989)—p. 1139
Listing by Location (index)—pp. xxxiv-xxxvi, pp. xlvii-xlviii
Listing by Decision (index)—p. liv

*Volume III*

Arizona:
AZ89-1 (Jan. 6, 1989)—pp.16-27
California:
CA89-4 (Jan. 6, 1989)—pp.70-71
North Dakota:
ND89-4 (Jan. 6, 1989)—p. 238

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued or or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st day of May 1989.

**Robert V. Setera,**

*Acting Director, Division of Wage Determinations.*

[FR Doc. 89-10786 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Abner Trucking Co. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 15, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 24th day of April 1989.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Abner Trucking Co. (Workers) | Clay City, IL | 4/24/89 | 2/17/89 | 22,800 | Replace Oil Well Pumps. |
| Anchor Glass Containers (Workers) | Salem, NJ | 4/24/89 | 3/27/89 | 22,801 | Beverage & Food Containers. |
| Blackstone Building, Inc. (Workers) | McPherson, KS | 4/24/89 | 3/27/89 | 22,802 | Oil & Gas. |
| Bram Ent., Inc. Plant No. 1 (Workers) | Sheldon, WI | 4/24/89 | 2/28/89 | 22,803 | Ladies Slacks. |
| Bram Ent., Inc. Plant No. 2 (Workers) | Hudson, WI | 4/24/89 | 2/28/89 | 22,804 | Ladies Slacks. |
| C.B. Cedar (Workers) | Coos Bay, OR | 4/24/89 | 3/1/89 | 22,805 | Lumber. |
| Carnival Bags (Workers) | Brooklyn, NY | 4/24/89 | 4/6/89 | 22,806 | Handbags & Cosmetic Bags. |
| Circle Rubber Corp. (Company) | Newark, NJ | 4/24/89 | 4/5/89 | 22,807 | Condoms. |

APPENDIX—Continued

| Petitioner (union/workers/firm | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| (The) DeVilbiss Co. (UAW) | Toledo, OH | 4/24/89 | 4/3/89 | 22,808 | Spray Gun Air Compressors. |
| Fiber-Strong Incorporated (Workers) | Ladysmith, WI | 4/24/89 | 3/28/89 | 22,809 | Produce Fiber Glass, Caps, etc. |
| GNB Batteries, Inc. (Workers) | Lynchburg, VA | 4/24/89 | 4/3/89 | 22,810 | Batteries. |
| Gemini Corp. (ILGWU) | Springfield, MA | 4/24/89 | 4/4/89 | 22,811 | Children's Adult Sportswear. |
| General Electric Co. Lighting Business Group (Workers) | Warren, OH | 4/24/89 | 4/5/89 | 22,812 | Trumbull Lamps. |
| Hermon's Machine Works, Inc. (Company) | Midland, TX | 4/24/89 | 4/4/89 | 22,813 | Oil & Gas. |
| Ideal Security Hardware (Workers) | St. Paul, MN | 4/24/89 | 3/30/89 | 22,814 | Hardware. |
| International Hat Co. (Workers) | Lutesville, MO | 4/24/89 | 4/4/89 | 22,815 | Hats & Caps. |
| Irving Simes & Son (UFCW) | New York, NY | 4/24/89 | 4/5/89 | 22,816 | Coats & Jackets. |
| Kromark, Inc. (Workers) | Jamaica, NY | 4/24/89 | 4/6/89 | 22,817 | Fabric Softener & Hair Grease. |
| Mastercraft Caskets (Workers) | Ladysmith, WI | 4/24/89 | 3/30/89 | 22,818 | Caskets. |
| Meridian Oil, Inc. Headquarters (Workers) | Houston, TX | 4/24/89 | 4/3/89 | 22,819 | Oil & Gas. |
| Meridian Oil, Inc. Houston Region; (Workers) | Houston, TX | 4/24/89 | 4/3/89 | 22,820 | Oil & Gas. |
| Meridian Oil, Inc. Midland Region (Workers) | Midland, TX | 4/24/89 | 4/3/89 | 22,821 | Oil & Gas. |
| Meridian Oil, Inc. Farmington, Region | Farmington, TX | 4/24/89 | 4/3/89 | 22,822 | Oil & Gas. |
| Meridian Oil, Inc. Billings/Denver Reg | Billings, MT | 4/24/89 | 4/3/89 | 22,823 | Oil & Gas. |
| Meridian Oil, Inc. Billings/Denver Reg | Denver, CO | 4/24/89 | 4/3/89 | 22,824 | Oil & Gas. |
| Modern Mfg. Braid, Co. (ILGWU) | New York, NY | 4/24/89 | 3/28/89 | 22,825 | Fabric. |
| Operators, Inc. (Workers) | Fairfield, ND | 4/24/89 | 4/5/89 | 22,826 | Oil & Gas. |
| Perrella Gloves, Inc. (ACTWU) | Gloversville, NY | 4/24/89 | 3/29/89 | 22,827 | Gloves. |
| Petromar Corp. (Workers) | Rockport, TX | 4/24/89 | 3/30/89 | 22,828 | Oil & Gas. |
| Professional Steel Rule Die Corp. (Workers) | New York, NY | 4/24/89 | 4/6/89 | 22,829 | Cutting Dies. |
| Royal, Inc. (IWU) | Chattanooga, TN | 4/24/89 | 4/6/89 | 22,830 | Fireplace Screens. |
| Rubin Gloves (ACTWU) | New York, NY | 4/24/89 | 3/29/89 | 22,831 | Ladies' & Men's Gloves. |
| SKF Industries, Inc.-Harnell Div. (Workers) | Hornell, NY | 4/24/89 | 4/4/89 | 22,832 | Water Pumps. |
| Stahmann Farms, Inc. (Company) | Las Cruces, NM | 4/24/89 | 4/4/89 | 22,833 | Pecans. |
| Tri-Dim Filter Corp. (Workers) | Hawthorne, NJ | 4/24/89 | 4/3/89 | 22,834 | Air Filters. |
| Wells Manufacturing Corp. (UAW) | Fond du Lac, WI | 4/24/89 | 4/6/89 | 22,835 | Automotive Ignition Components. |
| Whirlpool Corp. Fort Smith Div. (AIW) | Ft. Smith, AR | 4/24/89 | 3/30/89 | 22,836 | Refrigerators & Freezers. |
| Wiedmer Brothers Well Serv. (Workers) | Tioga, ND | 4/24/89 | 4/4/89 | 22,837 | Oil & Gas. |

[FR Doc. 89-10827 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,319]

## Florsheim Shoe Co., Herman, MO; Affirmative Determination Regarding Application for Reconsideration

The company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for former workers of Florsheim Shoe Company, Herman, Missouri. The negative determination was issued on March 9, 1989.

The company submitted additional information showing corrected 1988 corporate sales data. The company also stated that the plant ceased production in February, 1989.

### Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 24th day of April 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-10821 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

## Geosource, Incorp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—
TA-W-21,184, All Locations in Texas
TA-W-21,184A, All Locations in Colorado
TA-W-21,184B, All Locations in Alabama
TA-W-21,184C, All Locations in Louisiana
TA-W-21,184D, All Locations in Alaska
TA-W-21,184E, All Locations in Arizona
TA-W-21,184F, All Locations in Arkansas
TA-W-21,184G, All Locations in California
TA-W-21,184H, All Locations in Florida
TA-W-21,184I, All Locations in Georgia
TA-W-21,184J, All Locations in Idaho
TA-W-21,184K, All Locations in Iowa
TA-W-21,184L, All Locations in Kansas
TA-W-21,184M, All Locations in Kentucky
TA-W-21,184N, All Locations in Michigan
TA-W-21,184O, All Locations in Minnesota
TA-W-21,184P, All Locations in Mississippi
TA-W-21,184Q, All Locations in Montana
TA-W-21,184R, All Locations in Nevada
TA-W-21,184S, All Locations in New Mexico
TA-W-21,184T, All Locations in North Dakota
TA-W-21,184U, All Locations in Oklahoma
TA-W-21,184V, All Locations in Oregon
TA-W-21,184W, All Locations in Tennessee
TA-W-21,184X, All Locations in Utah
TA-W-21,184Y, All Locations in Washington
TA-W-21,184Z, All Locations in Wyoming.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 25, 1988, applicable to all workers of Geosource, Inc., Houston and Midland, Texas; Denver, Colorado and New Orleans, Louisiana.

Based on new information from the company, additional workers were separated from Geosource Incorported at other locations in Texas, Colorado and Louisiana and in the States of Alabama, Alaska, Arizona, California, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Utah, Washington and Wyoming during the period applicable to the petition. The notice, therefore is amended by including all locations of Geosource, Incorporated.

The amended notice applicable to TA-W-21,184 is hereby issued as follows:

All workers of Geosource, Inc., at all locations in the following States: Texas, Colorado, Louisiana, Alabama, Alaska,

Arizona, Arkansas, California, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Utah, Washington and Wyoming who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of April 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-10822 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

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**[TA-W-22,356 and TA-W-22,356A]**

## Honeywell Bull Phoenix Operations, Phoenix, Arizona and Honeywell Bull, U.S. Marketing, Sales & Services Division, Phoenix, Arizona; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona.

Based on new information from the company, the Department, on its own motion, expanded the investigation to include Honeywell Bull's Marketing, Sales and Services Division in Phoenix. New investigation findings show that worker separations at Honeywell's U.S. Marketing, Sales & Services Division were directly attributable to the shutdown of Honeywell Bull's production of large computer systems in Phoenix, Arizona. The notice, therefore, is amended by including Honeywell Bull's U.S. Marketing, Sales & Services Division in Phoenix, Arizona.

The amended notice applicable to TA-W-22,356 is hereby issued as follows:

All workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona and Honeywell Bull's U.S. Marketing Sales & Services Division, Phoenix, Arizona who became totally or partially separated from employment on or after November 28, 1988 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of April, 1989.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-10823 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

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## Martin Oil & Gas Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—
TA-W-22,292, Houston, Texas
TA-W-22,293, Phoenix, Arizona
TA-W-22,293A, All locations in Nebraska.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 10, 1989 applicable to all workers of Martin Oil & Gas Company, Houston, Texas and Phoenix, Arizona.

Based on new information from the company, additional workers were separated from Martin Oil & Gas Company in the State of Nebraska. The notice, therefore is amended by including all locations of Martin Oil & Gas Company.

The amended notice applicable to TA-W-22,292 and TA-W-22,293 is issued as follows:

All workers of Martin Oil & Gas Company in Houston, Texas and Phoenix, Arizona and in all locations in the State of Nebraska who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of April 1989.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 89-10824 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

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## Tooke International; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—
TA-W-21,984, Midland, Texas
TA-W-21,984A, all other locations in Texas
TA-W-21,984B, all locations in Wyoming
TA-W-21,984C, all locations in North Dakota
TA-W-21,984D, all locations in Michigan.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 1989 applicable to all workers of Tooke International, Midland, Texas.

Based on new information from the company, additional workers were separated from Tooke International at other locations in Texas and in the States of Wyoming, North Dakota and Michigan during the period applicable to the petition. The notice, therefore is amended by including all locations of Tooke International.

The amended notice applicable to TA-W-21,984 is issued as follows:

All workers of Tooke International, Midland, Texas and in other locations of Texas and in the States of Wyoming, North Dakota and Michigan who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of April 1989

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-10825 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

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## Westburne Drilling, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—
TA-W-21,543, Denver, Colorado
TA-W-21,543A, all locations in North Dakota
TA-W-21,543B, all locations in Montana
TA-W-21,543C, all locations in Wyoming
TA-W-21,543D, all locations in Utah.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 6, 1988 applicable to all workers of Westburne Drilling, Inc., Denver, Colorado.

Based on new information from the company, additional workers were separated from Westburne Drilling, Inc., in the States of North Dakota, Montana, Wyoming and Utah. The notice, therefore is amended by including all locations of Westburne Drilling, Inc.

The amended notice applicable to TA-W-21,543 is hereby issued as follows:

All workers of Westburne Drilling, Inc., in Denver, Colorado and in the States of North Dakota, Montana, Wyoming and Utah who became totally or partially separated from employment on or after October 1, 1985 and before September 20, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of April 1989.

**Barbara Ann Farmer,**

*Director, Office of Program Management, UIS.*

[FR Doc. 89-10826 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

[Docket No. M-89-58-C]

### Bitter Creek Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Bitter Creek Resources, Inc., P.O. Box 800, Reliance, Wyoming 82943 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Stansbury Mine (I.D. No. 48-01012) located in Sweetwater County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that examinations be made on a weekly basis of seals and of return entries in their entirety.

2. The Stansbury mine is a multi-seam operation. Past operations mined the No. 3 and No. 1 seams located above and connected to the No. 7 seam conveyor slope by two 300-ton storage bins. The No. 3 seam has been sealed from an entry directly above the No. 3 seam bin. In order to comply with the standard, examiners would have to climb approximately 65 feet up into the bin to reach the seal on top.

3. As an alternative method, petitioner proposes that—

(a) Remote monitors would be placed at specific locations to continuously monitor methane and oxygen deficiency, and to give early warning of any gas buildups. If any gases are detected, an audible and visual signal would be activated; and

(b) Visual inspection of the seals above the No. 3 seam bin would be conducted monthly. All sensors would also be visually inspected and calibrated during the monthly inspections.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 5, 1989. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Dated: April 28, 1989.

[FR Doc. 89-10828 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-89-54-C]

### Traveller Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Traveller Coal Company, Inc., P.O. Box 3279, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 3 (I.D. No. 15-16586) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Elkhorn Seam ranging from 42 to 44 inches in height. The seam has ascending and descending grades creating hilly areas over which the equipment must traverse.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the canopies would limit the operator's vision and seating position, and the canopies would strike the roof and rib support on the high spots, possibly creating a hazard to all involved.

4. For these reasons, petitioner requests a modification of the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 5, 1989. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

Dated: April 28, 1989.

[FR Doc. 89-10829 Filed 5-4-89; 8:45 am]

BILLING CODE 4510-43-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (89-32)]

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Planet Earth Technologies.

**DATES:** May 24, 1989, 9 a.m. to 4:30 p.m., and May 25, 1989, 9 a.m. to 3:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Jet Propulsion Laboratory, Building 198, Room 102, 4800 Oak Grove Drive, Pasadena, CA 91109.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne R. Hudson, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2740.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Planet Earth Technologies, chaired by Dr. Paul W. Mayhew, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

#### Agenda

May 24, 1989

9 a.m.—Status of Global Change Technology Initiative Planning.
9:30 a.m.—Results of Global Change Working Group Meetings.
11 a.m.—Review Team Answers to Key Questions.
1 p.m.—Edit Teams Assigned to Final Report Outline and Draft.
4:30 p.m.—Adjourn.

May 25, 1989

9 a.m.—General Discussion of Key Issues and Concerns, and Summary of Final Recommendations.
1 p.m.—Tour of Facility.

3:30 p.m.—Adjourn.

April 27, 1989.

John W. Gaff,

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 89-10820 Filed 5-4-89; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meeting of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

(1) *Date:* May 19, 1989
*Time:* 8:30 a.m. to 5:30 p.m.
*Room:* 316-2
*Program:* This meeting will review Faculty Graduate Study applications to Historically Black Colleges and Universities, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1990.

(2) *Date:* May 22, 1989
*Time:* 9:00 a.m. to 5:00 p.m.
*Room:* M-07
*Program:* This meeting will review Publication Subvention applications in History, submitted to the Division of Research Programs, for projects beginning after September 1, 1989.

(3) *Date:* May 30, 1989
*Time:* 9:00 a.m. to 5:00 p.m.
*Room: 315*
*Program:* This meeting will review Publication Subvention applications in Literature, submitted to the Division of Research Programs, for projects beginning after September 1, 1989.

(4) *Date:* May 31, 1989
*Time:* 8:30 a.m. to 5:00 p.m.
*Room:* 315
*Program:* This meeting will review applications in Regrants, submitted to the Division of Research Programs, for projects beginning after September 1, 1989.

Stephen J. McCleary,

*Advisory Committee, Management Officer.*

[FR Doc. 89-10792 Filed 5-4-89; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

### Report of the International Nuclear Power Plant Aging Symposium

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The NRC hosted an International Nuclear Power Plant Aging Symposium on August 30-31 and September 1, 1988, at the Hyatt Regency, Bethesda, Maryland. Approximately 550 nuclear scientists, engineers and regulators from 16 countries looked at the critical problem of nuclear power plant aging at the Symposium. During the three day event the attendees heard from principal regulators in the United States, a leading science advisor from the White House, and nuclear industry and regulatory leaders from around the world. A transcript of the Symposium is available at the NRC Public Document Room, 2120, L Street, NW., Washington, DC. The proceedings, NUREG/CP-0100, can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082, telephone (202) 275-2060.

**FOR FURTHER INFORMATION CONTACT:** Satish K. Aggarwal, General Chairman, International Nuclear Power Plant Aging Symposium, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3829.

#### Background

With the passage of three decades of nuclear power plant operations, the international nuclear power community is now entering a period during which issues related to the progressive aging of nuclear power plants will play an ever increasing role in the decision making process for the continued safe operation of these plants.

The Symposium was held to exchange views and discuss concepts for the future in areas which will be most productive in assuring safety of nuclear power plants. A rigorous international effort has been initiated to understand and manage plant aging, since plant aging and the potential concerns related to plant aging recognize no national boundaries.

The Symposium addressed research and development needs as well as design, maintenance and inspection. Papers presented in the technical sessions included such topics as aging research programs, aging of structures and mechanical equipment, aging of systems and components, reliability, role of maintenance in aging management, aging of vessels and steam generators. The Symposium ended with a summation panel session chaired by the Deputy Director General, International Atomic Energy Agency. Panel members included distinguished nuclear experts from around the world.

The report, NUREG/CP-0100 provides a complete overview of the Symposium proceedings, all of the presentations given by keynote speakers and remarks made at the panel session.

Issued in Rockville, Maryland, on April 28, 1989.

Robert Bosnak,

*Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 89-10853 Filed 5-4-89; 8:45 am]

BILLING CODE 7509-01-M

**[Docket Nos. 50-269, 50-270, and 50-287]**

### Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Duke Power

Company (the licensee) for amendments to Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55, issued to the licensee for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina. Notice of Consideration of Issuance of the amendments was published in the Federal Register on October 22, 1985 (50 FR 42810).

The purpose of the licensee's amendment request was to revise the Technical Specifications to allow the plant to operate for up to 24 hours should the core flood tank boron concentration become less than 1835 ppm. The Commission noted that the risk associated with the request had not been defined. The Commission also found insufficient basis for deviation from the Standard Technical Specification.

By June 5, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated September 12, 1984, and (2) the Commission's letter to the licensee dated April 28, 1989.

These documents are available for public inspection at the Commission's Public Document Room, 2100 L Street, NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.

**Lawrence P. Crocker,**

*Acting Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–10852 Filed 5–4–89; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–3.5]**

## Wisconsin Public Service Corp., et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing; Correction

In notice document 89–9881 appearing on page 17849 in the issue of Tuesday, April 25, 1989 make the following correction:

On page 17849, in the third column, first paragraph, in the third sentence, add the words "growth rate" after the words "However, overall population * * *".

Dated at Rockville, Maryland, this 28th day of April 1989.

For the Nuclear Regulatory Commission.

**John N. Hannon,**

*Director, Project Directorate III–3, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–10855 Filed 5–4–89; 8:45 am]

BILLING CODE 7590–01–M

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## NUCLEAR WASTE TECHNICAL REVIEW BOARD

## Nuclear Waste Technical Review Board; Meeting

The Nuclear Waste Technical Review Board published in the Federal Register (page 18856) on May 2, 1989, notice of meetings of its Panel on Risk and Performance Analysis. This is to announce a change of time for the meeting to be held on Wednesday, May 17, 1989. Meetings will be held on Tuesday, May 16, 1989, from 10:00 a.m.—4:00 p.m., and on Wednesday, May 17, 1989, from 8:30 a.m.—2:30 p.m. in room 6E–069 of the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 3, 1989.

**Dennis G. Condie,**

*Acting Administrative Officer, Nuclear Waste Technical Review Board.*

[FR Doc. 89–10956 Filed 5–4–89; 8:45 am]

BILLING CODE 6820–AM–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–26765; File No. SR–MSRB–89–1]**

## Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 7, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing amendments to rule G–35 relating to arbitration (hereafter referred to as the "proposed rule change").

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Section 12 provides that arbitration cases over $10,000 are decided by a panel of three arbitrators. The proposed rule change would revise rule G–35, the Arbitration Code, to permit the Director of Arbitration to assign cases that do not exceed $30,000 to a single arbitrator (either a public arbitrator for customer cases or an industry arbitrator for industry cases). At the request of a party in its initial complaint or answer, or at the request of the designated arbitrator, the Director of Arbitration would be required to designate a panel of three arbitrators. All cases over $30,000 would continue to be decided by a panel of three arbitrators.

The proposed rule change would reduce costs and delays in arbitration proceedings while preserving the opportunity to be heard before a three-person panel upon timely motion of a party or the designated arbitrator. The Board received 115 arbitration cases in 1988. Of these cases, claimants in 64

cases asked for under $10,000 in damages and, under Sections 34 and 35, these cases would have been decided by one arbitrator, usually without a hearing, under the small claims procedure. Claimants in another 20 cases asked for damages between $10,000 and $30,000. These cases were decided by panels of three arbitrators at a hearing. If the parties agree to have cases involving claims between $10,000 and $30,000 decided by only one arbitrator at a hearing the administrative burdens of a case, as well as arbitrator transportation costs, would be dramatically reduced. In addition, scheduling problems would be lessened when only one arbitrator's schedule has to be considered. The proposed rule change also will reduce the demand on the Board's arbitrator pool.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Securities Exchange Act of 1934. Section 15B(b)(2)(C) requires in pertinent part that the Board's rules be designed—

> to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. * * *

Section 15B(b)(2)(D) states that the Board shall, if it deems appropriate,

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: *Provided, however,* That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Board does not believe that the proposed rule change will effect any burdens on competition in the municipal securities industry because the proposed rule change will be equally applicable to all participants in the industry.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Board did not solicit and has not received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 26, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-10767 Filed 5-4-89; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-16943; (811-4698)]**

## Money Market Portfolios Trust; Notice of Application

April 28, 1989.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Money Market Portfolios Trust.

*Relevant 1940 Act Section:* Section 8(f) and Rule 8f-1 thereunder.

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an invesment company.

*Filing Date:* The application was filed on March 10, 1989.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESS:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 120 South LaSalle Street, Chicago, IL 60603.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. On June 6, 1986, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified managment investment company. On June 6, 1986, Applicant also filed Form N-1A pursuant to the Securities Act of 1933, which registration statement became effective on December 31, 1986. The initial public offering of Applicant's Money Market Portfolio commenced on January 2, 1987, and the initial public offering of its Government Securities Portfolio commenced on August 1, 1987. Applicant was organized as a Massachusetts business trust.

2. On October 10, 1988, Applicant's Board of Trustees approved the dissolution of Applicant. A vote of shareholders was not required pursuant to the specific terms of Applicant's Trust Agreement. Letters were mailed to the

relevant brokers and Applicant's shareholders informing them of the impending liquidation of Applicant and offering shareholders the option to transfer to alternate money market funds managed by Applicant's investment adviser and principal underwriter, Kemper Financial Services, Inc. ("Kemper"). On October 31, 1988, there were 16,816,852 shares outstanding in the Money Market Portfolio and no shares outstanding in the Government Securities Portfolio. The net asset value of both portfolios as of October 31, 1988, was $1.00 per share. On November 15, 1988, all remaining accounts in Applicant, which represented 2,688,451 shares, were redeemed and redemption checks, including accrued dividends, were mailed to shareholders of record.

3. No brokerage commissions were paid during the implementation of the liquidation. Kemper paid all liquidation expenses, which totaled $3,107. Kemper and Investors Fiduciary Trust Company have agreed to assume Applicant's remaining outstanding debts and liabilities.

4. Applicant has no shareholders and no assets. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs. Applicant intends to dissolve under Massachusetts law.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-10768 Filed 5-4-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 28, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consists of the adoption of a show-cause order, a tentative order, or in appropriate case a final order without further proceedings.

*Docket No.* 46266.
*Date Filed:* April 26, 1989.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 24, 1989.
*Description:* Application of TEM Enterprises, Inc. d/b/a Casino Express, pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property and mail.

*Docket No.* 46272.
*Date Filed:* April 28, 1989.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 26, 1989.
*Description:* Application of Nippon Cargo Airlines Co., Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations applies for an amendment to its foreign air carrier permit to operate nine scheduled wide-body roundtrip all-cargo flights per week between Tokyo and San Francisco/New York.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 89-10837 Filed 5-4-89; 8:45 am]

BILLING CODE 4910-62-M

## Research and Special Programs Administration

**[Notice No. 89-10]**

### Rotationally Molded Plastic Portable Tanks; Portable Tanks Manufactured Under DOT-E 9340; Potential Safety Problems

**AGENCY:** Research and Special Programs Administration, (RSPA), Department of Transportation (DOT).

**ACTION:** Advisory notice.

**SUMMARY:** The purpose of this notice is to advise interested persons that certain rotationally molded plastic portable tanks, marked as meeting the requirements of DOT exemption E-9340, manufactured by Pioneer Plastics & Services Co. Ltd., Brampton, Ontario, Canada, may not have been manufactured in compliance with the exemption. In addition, since an application for renewal of DOT-E 9340 was not filed in a timely manner, the exemption expired on November 30, 1988. Therefore, shipments of hazardous materials for which DOT specification packages are required are not authorized in packagings marked "DOT-E 9340."

**FOR FURTHER INFORMATION CONTACT:** J. Suzanne Hedgepeth, Exemptions and Approvals Division (DHM-31), Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** The Hazardous Materials Regulations (HMR), issued under authority of the Hazardous Materials Transportation Act (Pub. L. 93-633; 49 App. U.S.C. 1801 *et seq.*), are found in the Code of Federal Regulations (CFR), Title 49, Subchapter C, which is comprised of Parts 171 through 179. Subpart B of Part 107 contains the rules of procedure for issuance of exemptions.

The Enforcement Division of the Office of Hazardous Materials Transportation received information that rotationally molded polyethylene portable tanks marked as being manufactured in accordance with DOT-E 9340 may not be capable of passing the hydrostatic test specified in the exemption. Under the exemption, each portable tank was required to retain hydrostatic pressure of at least 15 psig for 5 minutes at equilibrium without leakage or pressure drop. A Research and Special Programs Administration (RSPA) inspector witnessed hydrostatic testing of two tanks marked DOT-E 9340. The first tank, manufactured in August, 1985, began to lead at 2 psig, culminating in the cover completely separating from the tank at 10 psig. The second tank, manufactured in September, 1985, began to lead at 1 psig, culminating in the cover completely separating from the tank at 9 psig.

The exemption requires each tank to have a wall thickness of not less than 0.250 inch at any point. The two tanks failing the hydrostatic test were examined and wall thickness measurements taken. Four of six measurements taken on each tank were below 0.250 inch; the lowest measurement on one tank was 0.152 inch; the lowest on the other was 0.185 inch. A third tank, manufactured in September, 1985, which had previously fallen and cracked open, was also measured for wall thickness. One measurement of 0.168 inch was recorded. In January, 1989, a measurement of 0.197 inch was recorded in a fourth tank.

In addition to evidence of noncompliance with the terms of the exemption, the exemption has expired. The fourth revision of DOT-E 9340 was issued to Pioneer Plastics & Services Co. Ltd. on April 1, 1988, with an expiration

date of November 30, 1988. A timely filing for renewal was not made by Pioneer. Therefore, portable tanks manufactured under the exemption are no longer authorized to be used for transportation of hazardous materials and the exemption number may no longer be displayed.

Under the terms of the exemption, shippers using tanks purportedly manufactured under DOT–E 9340 must have a copy of the exemption at each facility where they offer hazardous materials for transportation. The regulations (*e.g.*, 49 CFR 173.22a) presume that each shipper is aware of the status of the exemptions it uses. In this case, RSPA assumes that shipments of hazardous materials are no longer being offered for transportation in tanks marked "DOT–E 9340" since the exemption has expired.

RSPA acknowledges that there may be some tanks manufactured under the exemption that fully comply with its terms. Persons affected by the expiration of the exemption may apply for exemptions if they have determined that their tanks were manufactured in accordance with the terms of DOT–E 9340 and are capable of passing the tests specified therein. RSPA will review requests for exemptions on a case-by-case basis.

Pioneer Plastics & Services Co. Ltd. is not to be confused with Pioneer Plastics Corporation, which purchased the former company's assets on February 13, 1989. Pioneer Plastics Corporation had dealt with RSPA in good faith, as evidenced by a product warning, which it has sent to purchasers of DOT–E 9340 tanks (copies available upon request).

(49 App. U.S.C. 1802, 1803, 1804, 1805, 1806, 1808; 49 CFR 1.53(b))

Issued in Washington, DC on May 1, 1989 under the authority delegated in 49 CFR Part 106, Appendix A.

**Alan I. Roberts,**

*Director, Office of Hazardous Materials Transportation.*

[FR Doc. 89–10836 Filed 5–4–89; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May 1, 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 review listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Serevice**

*OMB Number:* 1545–0054
*Form Number:* 1000
*Type of Review:* Extension
*Title:* Ownership Certificate
*Description:* Form 1000 is used by citizens, resident individuals, fiduciaries, and partnerships and nonresident partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.
*Respondents:* Individuals or households, Businessess or other for-profit, Small businessess or organizations
*Estimated Number of Respondents:* 2,000
*Estimated Burden Hours Per Response:* 3 hours 10 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 6,320 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 89–10777 Filed 5–4–89; 8:45 am]

BILLING CODE 4810–25–M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 28, 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 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Departmental Offices**

*OMB Number:* New
*Form Number:* TD F 90–21.6, TD F 90–21.8
*Type of Review:* New Collection
*Title:* Survey of Depreciation of Assets Used in Radio and Television Broadcasting
*Description:* The purpose of this study is to collect data that will allow the determination of the class life for assets used in radio and television broadcasting. The study will affect commercial radio and television broadcasters and other for-profit businessess that use similar equipment for producing program materials.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Respondents:* 375
*Estimated Burden Hours Per Response:* 60 hours
*Frequency of Response:* Unless changes in technology require otherwise, reporting will be required only once.
*Estimated Total Reporting Burden:* 23,160 hours
*Clearance Officer:* Dale A. Morgan (202) 343–0263, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW. Washington, DC 20220.
*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. 89–10818 Filed 5–4–89; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF VETERANS AFFAIRS

### Wage Committee; Meetings

The Department of Veterans Affairs (VA) in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Thursday, May 18, 1989, at 2:30 p.m.
Thursday, June 1, 1989, at 2:30 p.m.
Thursday, June 15, 1989, at 2:30 p.m.
Thursday, June 29, 1989, at 2:30 p.m.

The meetings will be held in Room 300, Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage

schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

This notice does not appear 15 days prior to the meeting due to delays in administrative processing.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 27, 1989.

By Direction of the Secretary.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89–10760 Filed 5–4–89; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 86
Friday, May 5, 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 DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:09 p.m. on Tuesday, May 2, 1989, the Board of Directors of the Federal Deposite Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 3, 1989.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 89-10989 Filed 5-3-89; 3:57 pm]

BILLING CODE 6714-01-M

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, May 9, 1989, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, May 11, 1989, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Revised Affiliation and Earmarking Regulations (11 CFR 110.3—§ 110.6)
Status of Automated Data Processing Project
Administrative Matters

**PERSONS TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

**Marjorie W. Emmons,**

*Secretary of the Commission.*

[FR Doc. 89-10936 Filed 5-3-89; 11:44 am]

BILLING CODE 6715-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

May 2, 1989.

**TIME AND DATE:** 10:00 a.m., Wednesday, May 10, 1989.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following.

1. *BethEnergy Mines, Inc.*, Docket No. PENN 87-94, etc. (Issues include whether BethEnergy violated 30 CFR § 75.1704.)

It was determined by a unanimous vote of Commissioners that this meeting be closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 89-10946 Filed 5-3-89; 11:44 am]

BILLING CODE 6735-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:**

**TIME AND DATE:** 10:00 a.m., Wednesday, May 10, 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.

Date: May 2, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-10914 Filed 5-2-89; 4:40 pm]

BILLING CODE 6210-01-M

**NATIONAL CREDIT UNION ADMINISTRATION**

**TIME AND DATE:** 1:00 p.m., Thursday, May 11, 1989.

**PLACE:** Lincoln Hilton, 141 North 9th Street, Lincoln, Nebraska 68508, (402) 475-4011.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Regulatory Review, NCUA's Rules and Regulations, Proposed Amendments to:
   a. Sections 700.1(j), 702.2, and 702.3, Risk Assets.
   b. Section 701.21(f), 15-Year Loan Rule.
   c. Section 701.31, Loan Nondiscrimination Requirements.
   d. Section 704.8, Corporate Credit Unions Ownership of Fixed Assets.
   e. Part 708, Change in Insured Status.
6. Legislative Update.

**TIME AND DATE:** 9:00 a.m., Tuesday, May 16, 1989.

**PLACE:** Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Approval of Minutes of Previous Closed Meetings.

2. Appeals of Regional Director's Denial of Federal Insurance. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Charter Conversion. Closed pursuant to exemption (8).
4. Special Assistance under Section 208 of the FCU Act. Closed pursuant to exemptions (8), 9(A)(ii), and (9)(B).
5. Administrative Action under Section 206 of the FCU Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
6. Board Briefing.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 89-10972 Filed 5-3-89; 2:13 p.m.]

BILLING CODE 7535-01-M

# Corrections

Federal Register
Vol. 54, No. 86
Friday, May 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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

### Food and Nutrition Service

### 7 CFR Part 246

### Special Supplemental Food Program for Women, Infants and Children (WIC); Funds Use Flexibility for States Implementing Food-Cost-Cutting Systems

*Correction*

In rule document 89-10145 beginning on page 18087 in the issue of Thursday, April 27, 1989, make the following corrections:

1. On page 18087, in the third column, in the second complete paragraph, in the eighth line, "proceding" should read "preceding".

**§ 246.16 [Corrected]**

2. On page 18092, in the second column, in § 246.16(b)(3), the subparagraph designation "(iv)" should read "(vi)".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 109 and 509

**[Docket No. 88N-0006]**
**RIN 0905-AC73**

### Action Levels for Added Poisonous or Deleterious Substances in Food

*Correction*

In proposed rule document 89-9580 beginning on page 16128 in the issue of Friday, April 21, 1989, make the following corrections:

On page 16130, in the first column, under *21 CFR Part 109*, in the second line, "(PBC's)" should read "(PCB's)".

On the same page, in the same column, under **PART 109 - UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL**, in the authority citation, in the fourth line, "411-518" should read "511-518".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 84N-0102]**

### Cumulative List of Orphan-Drug and Biological Designations

*Correction*

In notice document 89-6595 beginning on page 16294 in the issue of Friday, April 21, 1989, make the following correction:

On page 16294, in the table, in the first column, in the seventh entry, in the second line, "01-RTA." should read "001-RTA."

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM-940-09-4214-10; NM NM 55234]**

### Proposed Modification and Partial Termination of Public Land Order No. 6403 and Public Hearings; New Mexico

*Correction*

In notice document 89-9359 beginning on page 15814 in the issue of Wednesday, April 19, 1989, make the following corrections:

1. On page 15814, in the third column, in the seventh line, "public laws" should read "public land laws".

2. On the same page, in the same column, under **SUPPLEMENTARY INFORMATION**, in the sixth line, "general laws" should read "general land laws".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Parts 316, 342, and 351

**[Dept. of Treasury Circs. No. 653, Tenth Revision; Public Debt Series No. 3-67, 2nd Rev.; and No. 1-80, 2nd Rev.]**

### U.S. Savings Bonds and Notes; Tables Reflecting Investment Yields and Maturity Periods

*Correction*

In rule document 89-9459 beginning on page 15924 in the issue of Thursday, April 20, 1989, make the following correction:

On page 15931, in the heading to the second table, "U.S. SAVINGS BONDS, SERIES E" should read "U.S. SAVINGS BONDS, SERIES EE"

BILLING CODE 1505-01-D

federal register

Friday
May 5, 1989

Part II

# Department of Education

34 CFR Part 548

Bilingual Education; State Educational Agency Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 548

## Bilingual Education; State Educational Agency Program

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the State educational agency (SEA) Program. The SEA Program provides financial assistance to State educational agencies to collect, analyze, and report data and information on limited English proficient persons and furnish additional services in support of bilingual education in the States.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Mr. Luis A. Catarineau, Office of Bilingual Education and Minority Languages Affairs (OBEMLA), U.S. Department of Education, 400 Maryland Avenue, SW. (Room 5086, Mary E. Switzer Building), Washington, DC 20202–2518. Telephone: (202) 732–5707.

**SUPPLEMENTARY INFORMATION:** The State Educational Agency (SEA) Program is authorized under section 7032 of the Bilingual Education Act, Title VII of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 100–297, enacted on April 28, 1988 (20 U.S.C. 3281–3341). Technical amendments to the regulations to conform to the Act as amended by Pub. L. 100–297 (1988) were published in the **Federal Register** on October 5, 1988 (53 FR 39222). These final regulations reflect these changes.

Section 548.10 of the regulations implement the requirement of the Act that SEAs collect, analyze, and report data and information on limited English proficient persons and educational services provided or available to those persons in their States. The Statewide aggregations of data and information required is described in section 7021(c)(2)(A)–(E) of the Act.

On August 16, 1985, the Secretary published final regulations with invitation to comment for the SEA Program in the **Federal Register** (50 FR 33202–33206).

### Analysis of Comments and Changes

In response to the Secretary's invitation to comment, several parties submitted comments on the final regulations. An analysis of the comments and of the change in the regulations since publication of the final regulations with invitation to comment follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

*Section 548.10 What activities are required under this program?*

*Comments:* The Secretary received several comments regarding the unduly burdensome nature of the data and information that the regulations required SEAs to collect, analyze, and report.

*Discussion:* The data and information described in section 7021(c)(2) (F)–(J) of the Act pertain specifically to programs conducted by LEAs and are included in grant applications submitted by LEAs to the Secretary. The Secretary agrees that requiring SEAs to collect and report these data would be unnecessarily duplicative. Requiring SEAs to collect and report the data and information described in section 7021(c)(2) (A)–(E) of the Act, provides statewide aggregations of data and information otherwise unavailable to the Secretary.

*Changes:* The requirement that SEAs collect, analyze, and report data and information pertaining to specific programs at LEAs (as described in section 7021(c)(2) (F)–(J) of the Act) is deleted from the regulations.

*Section 548.11 What additional activities may a State educational agency (SEA) provide under this program?*

*Comments:* One commenter stated that the regulations should include among the additional activities allowed under this program training for SEA personnel in providing authorized services. The commenter stated further that this training should be provided by the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), the OBEMLA Multifunctional Resource Centers, and the OBEMLA Evaluation Assistance Centers.

*Discussion:* Section 548.11(a)(5) authorizes training of SEA staff to carry out the purposes of Title VII programs. In order to give SEAs flexibility in meeting their training needs, this section does not restrict who may provide this training.

*Changes:* None.

*Section 548.30 How are funds distributed to an SEA?*

*Comments:* One commenter requested a clarification of the process for determining the amount of funds awarded to SEAs. The commenter suggested that the process include a "funding motivation", whereby an SEA would be awarded a larger amount for assisting in the development of additional programs for limited English proficient students in the State.

*Discussion:* The Act establishes the minimum and maximum levels of funds that an SEA may receive in any fiscal year. In addition, the regulations specify that the Secretary will determine the amount of an award on the basis of the reasonableness of an SEA's proposed budget to carry out the activities required under § 548.10, the need for any of the additional activities proposed under § 548.11, and the total funds available for awards under this program. The Secretary believes that these factors are sufficient for ensuring an equitable distribution of the funds.

*Changes:* None.

### Executive Order 12291

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

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### List of Subjects in 34 CFR Part 548

Bilingual education, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

Dated: April 11, 1989.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education: State Educational Agency Program)

Lauro F. Cavazos,

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 548 to read as follows:

## PART 548—BILINGUAL EDUCATION: STATE EDUCATIONAL AGENCY PROGRAM

### Subpart A—General

Sec.

548.1 State Educational Agency Program.
548.2 Who is eligible to apply for assistance under the State Educational Agency Program?
548.3 What regulations apply to the State Educational Agency Program?
548.4 What definitions apply to the State Educational Agency Program?

### Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

548.10 What activities are required under this program?
548.11 What additional activities may a State educational agency (SEA) provide under this program?

### Subpart C—How Does an SEA Apply for an Award?

548.20 What must an SEA include in its application?

### Subpart D—How Does the Secretary Make an Award?

548.30 How are funds distributed to an SEA?
548.31 How does the Secretary evaluate an application?
548.32 What selection criteria does the Secretary use?

### Subpart E—What Conditions Must Be Met by a Recipient?

548.40 What requirements apply to an SEA?

**Authority:** 20 U.S.C. 3281–3341, unless otherwise noted.

## Subpart A—General

### § 548.1 State Educational Agency Program.

The State Educational Agency Program provides financial assistance to State educational agencies (SEAs) to—

(a) Collect, aggregate, analyze, and publish data and information on the limited English proficient persons in their States and the educational services provided or available to those persons; and

(b) Carry out activities designed to improve the effectiveness of programs of bilingual education in their States, such as those assisted under Title VII.

(Authority: 20 U.S.C. 3302)

### § 548.2 Who is eligible to apply for assistance under the State Educational Agency Program?

An SEA is eligible to apply for assistance under this program.

(Authority: 20 U.S.C. 3302)

### § 548.3 What regulations apply to the State Educational Agency Program?

The following regulations apply to the State Educational Agency Program:

(a) The regulations identified in 34 CFR 500.3.

(b) The regulations in this Part 548.

(Authority: 20 U.S.C. 3302)

### § 548.4 What definitions apply to the State Educational Agency Program?

The definitions in 34 CFR 500.4 apply to the State Educational Agency Program.

(Authority: 20 U.S.C. 3302)

## Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

### § 548.10 What activities are required under this program?

(a) An SEA that receives a grant under this program shall collect, aggregate, analyze, and publish data and information on the limited English proficient persons in the State and the educational services provided or available to those persons.

(b) The SEA shall report the data and information required to be collected under this section to the Secretary.

(c) The data and information collected under this section must include Statewide data and information described in section 7021(c)(2) (A)–(E) of the Act, and statewide data and information on educational services provided or available to LEP persons as required by section 7032(a) of the Act.

(d) An SEA shall submit to the Secretary the data and information required in paragraph (c) of this section, on or before the date established by the Secretary in the **Federal Register**.

(e) An SEA shall make the data and information reported to the Secretary available for publication and dissemination to the public, particularly to persons of limited English proficiency in the State.

(Authority: 20 U.S.C. 3302)

(Approved by the Office of Management and Budget under control number 1885–0509)

### § 548.11 What additional activities may a State educational agency (SEA) provide under this program?

(a) An SEA may propose any of the following additional activities:

(1) Planning and developing educational programs such as those assisted under Title VII.

(2) Reviewing and evaluating programs of bilingual education, including bilingual education programs that are not funded under Title VII.

(3) Providing, coordinating, or supervising technical and other forms of non-financial assistance to local educational agencies (LEAs), community organizations, and private elementary and secondary schools that serve limited English proficient persons.

(4) Developing and administering instruments and procedures for the assessment of the educational needs and competencies of limited English proficient persons.

(5) Training SEA and LEA staff to carry out the purposes of programs assisted under Title VII.

(6) Other activities and services designed to build the capacity of SEAs and LEAs to meet the educational needs of limited English proficient persons.

(b) An SEA shall indicate its priorities for funding.

(Authority: 20 U.S.C. 3302)

## Subpart C—How Does an SEA Apply for an Award?

### § 548.20 What must an SEA include in its application?

An SEA shall assure the Secretary in its application that it will work cooperatively with and coordinate efforts with the Multifunctional Resource Centers, the Bilingual Evaluation Assistance Centers, the National Clearinghouse for Bilingual Education, and other LEA technical assistance service providers in the State.

(Authority: 20 U.S.C. 3302)

## Subpart D—How Does the Secretary Make an Award?

### § 548.30 How are funds distributed to an SEA?

(a) The Secretary may award to an SEA funds necessary for the proper and efficient conduct of a project under this program.

(b) The amount paid to an SEA for any fiscal year may not be less than $75,000 nor greater than 5 percent of the total amount paid to LEAs within the State under Part A of Title VII during the fiscal year preceding the year for which assistance is sought.

(c) In determining the amount of an award to an SEA the Secretary considers—

(1) The reasonableness of an SEA's proposed budget to carry out the activities required under § 548.10;

(2) The need for any of the additional activities proposed under § 548.11; and

(3) The total funds available for awards to SEAs under this program.

(Authority: 20 U.S.C. 3302)

**§ 548.31 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria listed in § 548.32 in deciding whether to approve a program under section 7032.

(b) The Secretary awards a maximum of 100 points to evaluate the activities under § 548.10 and the additional activities an SEA may propose under § 548.11.

(c) The maximum possible score for each complete criterion is indicated in parentheses after the heading for each criterion.

(d) The Secretary awards a grant to each SEA that—

(1) Meets the applicable requirements in section 7032 and in this part; and

(2) Submits an application that achieves a score of at least 50 points under the selection criteria.

(e) The Secretary permits an SEA to modify and resubmit an application that has been disapproved under paragraph (d)(2) of this section.

(Authority: 20 U.S.C. 3302)

**§ 548.32 What selection criteria does the Secretary use?**

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation.* (25 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary looks for—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purposes of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly;

(vi) The methods the SEA proposes to use to provide services; and

(vii) The SEA's plans to work cooperatively with and coordinate activities with other providers of technical assistance to avoid duplication of services to the LEAs in the State.

(b) *Capacity building.* (25 points) The Secretary reviews each application for—

(1) A clear and concise plan for developing resources, including activities such as the training of SEA personnel, that will increase the capacity of the State to—

(i) Collect and analyze data necessary to identify and promote effective educational programs and practices for limited English proficient students; and

(ii) Carry out other activities assisted under this part, and

(2) The commitment of the State to incorporate and build the proposed activities into the State's overall ongoing programs designed to improve services to LEAs in the State.

(c) *Quality of key personnel.* (25 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary considers—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) Participation of trained personnel in fields related to the objectives of the project;

(iv) The time that each person referred to in paragraphs (c)(2) (i) and (ii) of this section will commit to the project; and

(v) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the activities of the project, as well as other evidence that the applicant provides.

(d) *Cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective for the proposed activities under section 7032.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

**Cross-Reference:** See 34 CFR 75.590 Evaluation by the grantee.

(2) The Secretary considers—

(i) The method used to determine effectiveness of activities included in the SEA plan;

(ii) How the applicant determines the effect of the activities on LEA operations; and

(iii) Methods used to improve delivery of services to LEAs.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(Authority: 20 U.S.C. 3302)

## Subpart E—What Conditions Must Be Met by a Recipient?

**§ 548.40 What requirements apply to an SEA?**

An SEA shall use funds made available under this program to supplement and, to the extent practical, increase the level of funds that, in the absence of the grant, would have been made available by the State for activities required and authorized under this program. In no case may the funds made available under this program be used to supplant funds already being provided, or funds that would have been provided by the State for these activities.

(Authority: 20 U.S.C. 3302)

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May 5, 1989

Part III

# Department of Labor

## Mine Safety and Health Administration

30 CFR Part 44

Rules of Practice for Petitions for Modification of Mandatory Safety Standards; Proposed Rule

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 44**

**RIN 1219-AA45**

## Rules of Practice for Petitions for Modification of Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration (MSHA), Department of Labor.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would revise the Mine Safety and Health Administration's Rules of Practice for Petitions for Modification of Mandatory Safety Standards. The proposal adds time frames for consideration of petitions at all stages of review. The proposal includes a revision of the Agency's existing procedures for evaluating applications for interim relief, conforming them to the decision of the United States Court of Appeals in *International Union, United Mine Workers of America (UMWA)* v. *Mine Safety and Health Administration (MSHA)*, 823 F.2d 608 (DC Cir. 1987).

**DATES:** Written comments must be submitted on or before July 5, 1989.

**ADDRESS:** Send written comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, Phone (703) 235-1910.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In its July 1987 decision in *UMWA* v. *MSHA*, the United States Court of Appeals for the District of Columbia Circuit held that the Agency had improperly granted indefinite interim relief from enforcement of a mandatory safety standard under 30 CFR 44.16, without an opportunity for a hearing for the opposing party and with no provision for that party to appeal the decision. The Court found that to be consistent with section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), modifications of mandatory safety standards may not be granted except after notice, an opportunity for a hearing, and upon a finding by the Secretary that an alternative method exists which will at all times guarantee no less than the same measure of protection as the standard or that the application of the standard will result in a diminution of safety to the miners at the mine.

The Court of Appeals also found that "Congress did not intend to authorize the Secretary to grant temporary relief from mandatory safety standards as a matter of course under section 101(c)." 823 F.2d at 619. The Court, however, specifically recognized that MSHA may have legitimate need "to provide a short term remedy to prevent frustration of a statutory mandate," *Id.* at 619 n.8. The Court did not rule whether the Agency would have authority to grant relief from a mandatory safety standard, on a temporary basis, when application of the standard would increase the danger to miners. *Id.* at 616 n.6.

In a decision issued on August 14, 1987, the Deputy Assistant Secretary of Labor for Mine Safety and Health interpreted the Court of Appeals decision to permit granting "prudent and timely relief" in cases where the safety of miners is in jeopardy. *In the Matter of: Utah Power and Light Company, Mining Division*, at 8. The Deputy Assistant Secretary's decision included a commitment to revise the Agency's interim relief regulations.

Since the Deputy Assistant Secretary's decision of August 14, 1987, MSHA has examined all of its procedures for evaluating petitions for modification and believes that improvements can be made in the time necessary for final Agency decisions to be made on petitions, and in utilization of MSHA expertise in the most difficult and complex petition for modification cases. In the Agency's experience, some petitions, if contested, can require more than two years before a final case resolution is reached. Also, when a contested case reaches the level of the Assistant Secretary for decision under the existing procedures, the Assistant Secretary is unable to consult the technical experts in the Agency who have represented the Administrator's position at the administrative hearing stage. Generally, these experts, and the Administrator, are the MSHA personnel most familiar with the petition for modification and the technical issues it rasies. To remedy this situation, this proposal would modify the existing Part 44 procedures within the existing Mine Act framework requiring notice, the opportunity for a hearing, and a specific finding by MSHA before a petition for modification may be granted.

Apart from its review of the Part 44 petition for modification procedures, the Agency has received a petition for rulemaking from the National Coal Association (NCA). This rulemaking petition, dated June 14, 1988, is aimed at establishing procedures for expedited consideration of section 101(c) petitions for modification where circumstances exist that may require an accelerated timetable in order to continue safe and effective mining operations. The proposal goes beyond the NCA petition and incorporates a time schedule for all stages of decisionmaking on petitions. Also, at various stages in the petition process, the proposal would permit interested parties to submit requests to expedite or extend the time schedule, which may be granted in the discretion of the decisionmakers.

### II. Discussion of Proposal

*A. General Discussion*

The proposal would revise existing Part 44 by adding time frames at all stages of the petition for modification process.

After a petition is filed, the proposal would require an investigation to be conducted by MSHA and, as soon as is practicable, would require the appropriate Administrator to issue a draft proposed decision and order. The draft decision and order would allow the parties to comment on the Administrator's decision before a final decision is issued, as is current practice. Forty-five days after the close of this comment period, the Administrator would be required to issue a final proposed decision and order (PDO). As under the existing rules, if no hearing is requested in the 30 days after the PDO is issued, it would become final.

If a hearing were to be requested, the case file would be required to be referred immediately to the Chief Administrative Law Judge for the Department of Labor. A new provision would require the Chief Judge to designate an administrative law judge to preside over the hearing within five days after receipt of the case file. Forty-five days would then be afforded for discovery, after which a hearing would be scheduled by the judge as soon as is practicable. Following the hearing, parties would have 30 days to submit proposed findings and briefs to the judge. Within 60 days after briefs are filed, the judge would be required to render a decision.

Unlike the existing rules, which specify appeal to the Assistant Secretary's office, an appeal of a petition under the proposal would be required to be filed with the Secretary. Thus, in each petition proceeding, MSHA would issue only one decision—the Administrator's PDO.

The proposal would delete existing procedures in § 44.16 for applications for

interim relief. This aspect of the proposal recognizes the *UMWA* v. *MSHA* decision of the Court of Appeals, which invalidated the interim relief regulation. Since that decision, no applications for interim relief have been granted by the Agency, although MSHA continues to interpret the Court of Appeals decision to permit carefully tailored, short-term remedies in cases where application of the standard at a mine endangers miners.

The proposal does not incorporate a new provision addressing temporary relief in diminution of safety cases or other emergency situations. However, the rule does permit the Administrator to give immediate effect to a PDO in uncontested cases. This relief, which would be granted only after issuance of a PDO, would be effective only until superseded by the decision and order itself, or until the PDO is contested. An application for relief under this aspect of the proposal would be required to include a good faith representation that no party is expected to contest the PDO.

*B. Section-by-Section Discussion*

Section 44.13 Proposed Decision

The proposal retains the existing concept of a proposed decision and order (PDO) issued by the Administrator for Coal Mine or Metal and Nonmetal Mine Safety and Health, as appropriate, following MSHA investigation of the petition for modification. The proposal would add a provision, however, which would codify the existing practice of issuing a draft PDO in order to allow the parties 20 days to comment before the final PDO is issued. MSHA's experience has been that this practice often results in the submission of well-reasoned comments, which in turn help the Administrator to issue a better-formulated PDO.

The proposal would also add a time period within which the final PDO must be issued. Under paragraph (c), the Administrator would be required to issue a proposed decision and order within 45 days after the close of the 20-day comment period on the draft PDO. As under the existing rule, the PDO would be final after the expiration of 30 days, unless a request for hearing is filed in accordance with § 44.14, which would be unchanged by the proposal.

The proposal would permit the Administrator to grant requests to expedite or extend the time period necessary for the investigation of the petition. Under paragraph (b) of the proposal, such requests may also include a request to waive the draft decision and order and move directly to issuing the final PDO. In the Agency's experience with petitions, instances have occurred where the parties have submitted joint agreements to the Administrator and have asked these agreements to be incorporated into the PDO without first issuing the draft. MSHA believes that this practice has resulted in more timely implementation of some petitions and should be allowed to continue.

Section 44.15 Referral to Chief Administrative Law Judge

The proposal would revise existing § 44.15 to include referral of the results of the MSHA investigation to the Chief Administrative Law Judge if a hearing is requested, in addition to the Administrator's Proposed Decision and Order. Under the proposal, the results of the investigation and any staff recommendations would be made a part of the record on the petition. Consistent with this aspect of the proposal, § 44.34 would be revised to require the administrative law judge to transmit to the Secretary, when an appeal is filed, the MSHA investigation results and staff recommendations, as part of the record of the petition case.

Section 44.16 Application for Relief to Give Effect to the Proposed Decision and Order

Consistent with the *UMWA* v. *MSHA* decision discussed above, the proposal would replace the existing rule governing applications for interim relief with a procedure that would address circumstances where implementation of a Proposed Decision and Order of the Administrator may be appropriate before it would become final under § 44.13. Under § 44.13, which would be unchanged by the proposal except as described above, the Proposed Decision and Order would not become final until the thirtieth day after service. However, this aspect of the proposal would permit the Administrator's Decision and Order to become effective on an accelerated schedule when the Administrator has proposed granting a petition based upon either an alternative method or a diminution of safety and no party disagrees with this determination. Agency experience with the petition process is that after a petition is granted, the 30-day contest period provided by existing § 44.13 can, in some instances, delay timely implementation of the decision and cause unnecessary compliance problems or other unforeseen circumstances. To prevent this when no party opposes implementation of a Proposed Decision and Order, the proposal would permit applications for relief following a Proposed Decision and Order to be filed with the Administrator.

Under the proposal, an application to give effect to the Administrator's decision and order during the 30-day contest period would be required to include a good faith representation that no party is expected to contest the granting of the modification. This representation may include an affidavit from the operator that assurance has been received from the representative of miners that no contest will be filed. Comments from the representatives of miners supporting the petition for modification may also be included.

A decision granting relief following a Proposed Decision and Order would take effect in 7 days. This period would allow any party to the petition for modification to prevent accelerated implementation of a Proposed Decision and Order by filing a contest of the decision and order before an administrative law judge. Under the proposal, such a contest would prevent the relief from becoming effective. If, after relief becomes effective, a contest is filed on the underlying petition, the relief would expire immediately. Under these circumstances, the case would be referred to the Chief Administrative Law Judge, who may consider requests to expedite the hearing schedule.

This aspect of the proposed rule is intended to apply only when, due to unforeseen circumstances, delaying the effective date of the Proposed Decision and Order of an Administrator for 30 days would unnecessarily disrupt mining, cause dislocation of a work force, or otherwise unduly injure the interests of the parties to the petition process. As discussed above, it would have no application when any party opposes a Proposed Decision and Order to grant a petition for modification. In addition, MSHA will continue to require that petitions for modification be timely filed in advance of when the requested modification will be needed at the mine. In the vast majority of cases, the 30-day contest period provided for by existing § 44.13 well-serves the purpose of providing parties to the petition for modification process a reasonable opportunity to contest the Proposed Decision and Order of an Administrator. MSHA, therefore, anticipates that relief under proposed § 44.16 would be granted only in exceptional circumstances.

Section 44.20 Designation of Administrative Law Judge

The proposal retains the existing provision which specifies that following a request for hearing on the

Administrator's PDO, the Chief Administrative Law Judge must designate a presiding judge to conduct the hearing. As is the current practice, the presiding judge must be one appointed under section 3105 of title 5 of the United States Code. Under the proposal, the Chief Judge must designate the presiding judge within five days of the hearing request. This aspect of the proposal is intended to reduce the potential for unnecessary delay in the timely trial of petition for modification cases.

Section 44.24 Discovery

The proposal would add a provision to the existing rule that would limit the period afforded to the parties for discovery to 45 days. MSHA believes that in most cases 45 days will be adequate to allow full development of the evidence to be presented at the hearing by all parties. However, the proposal would allow the presiding administrative law judge to entertain requests by the parties to shorten or lengthen the discovery period. In this way, the presiding judge would be able to tailor the discovery period to the particular demands of each case. The proposal would also specify that as soon as is practicable after the close of discovery, the presiding judge be required to schedule a hearing in accordance with existing § 44.28, which would be unchanged by the proposal.

Section 44.27 Consent Findings and Rules or Orders

The proposal would modify existing § 44.27(b)(2) to expand the record upon which a consent agreement could be based in a petition for modification case. The existing rule permits this record to consist "solely of the petition and agreement," a provision which has caused confusion in instances where cases have been settled. The proposal would allow the record to include the MSHA investigation and recommendation, and other pertinent information. Also, at this stage in rulemaking, MSHA is considering an amendment to existing § 44.27 that would specifically recognize the possibility of settling petition for modification cases at any time after a hearing is requested, including after a hearing is completed. MSHA additionally solicits comments on whether the final rule should require settlements to be approved by the administrative law judge, or the Secretary, depending on the procedural posture of the case. Existing §§ 44.27 (c) and (d) provide for settlement agreements prior to a hearing only and require that they must be submitted to and approved by the presiding administrative law judge.

Section 44.31 Proposed Findings of Fact, Conclusions, and Orders

The proposal would revise existing § 44.31 to require that post-trial submissions to the presiding judge be filed within a time period of 30 days or as otherwise prescribed by the judge upon the request of a party. The existing rule requires that proposed findings of fact, conclusions of law, rules or orders, and supporting briefs be filed within a period of time prescribed by the judge of not less than 20 days. MSHA believes that the 30 days permitted by the proposal will in most cases provide adequate time for development of post-trial positions of the parties and will expedite decision making in petition for modification cases.

Section 44.32 Initial Decision

The proposal would revise paragraph (a) of existing § 44.32. Paragraph (b) would be retained in its current form.

The proposal would establish a 60-day time frame after filing of the post-trial submissions prescribed in § 44.31 within which the presiding administrative law judge must issue a decision. The Agency determined that this time period was appropriate after consulting with the Chief Administrative Law Judge, United States Department of Labor. The Chief Judge agreed that 60 days would be adequate to arrive at a reasoned decision in a petition case, and would well-serve the goal of reducing unnecessary delay in the petition process. However, the proposal would permit the judge to extend or expedite the decisionmaking process, after consultation with the parties, and based upon the facts of the particular case.

Section 44.33 Departmental Review

The proposal revises existing § 44.33 to substitute the Secretary of Labor as the final decisionmaker for the Department of Labor in petition for modification cases. Under the existing procedures, an appeal from a decision of an administrative law judge is filed with the Assistant Secretary of Labor for Mine Safety and Health.

Under the existing rules and the Administrative Procedure Act, the Assistant Secretary, as the final decisionmaker in petition cases, must be isolated from the technical and legal staff in the Agency who have participated in issuing the Administrator's PDO and defending it at trial. The proposal would transfer responsibility for deciding appeals to the Secretary so that MSHA would be able to maintain a single position regarding the merits of the case. This transfer would therefore require the Department's Office of Administrative Appeals to evaluate petition cases on behalf of the Secretary. MSHA believes that this aspect of the proposal will facilitate final decisionmaking in petition cases.

Section 44.35 Decision of the Secretary

The proposal would revise § 44.35 to require the Secretary to decide appeals in petition for modification proceedings as promptly as practicable. Also, like proposed § 44.32(a), the proposal would permit the Secretary to expedite the decision upon motion of any party. MSHA believes that this will help minimize delay in reaching a final decision.

As under existing § 44.35, the decision of the Secretary would be based on a consideration of the entire record, and may affirm, modify, or set aside, in whole or in part, the decision of the administrative law judge. Also, the proposal would clarify the implied authority in the current rule to remand a case to the administrative law judge by specifying that the Secretary may remand cases to administrative law judges. The Agency anticipates, however, that consistent with the current practice, remand will be exercised only in a small number of instances.

*Other Issues*

*Conforming Amendments.* The Agency anticipates that the proposal, when final, would require a number of conforming amendments to existing Part 44. Most of these would recognize that under the revised procedures, the Secretary will be the final arbiter of petitions, in lieu of the Assistant Secretary. These would require amendment of §§ 44.6(f), 44.21(a), 44.27(b)(3), 44.33 (a) and (b), 44.34, 44.40(e), 44.41(a), and 44.51. The final rule would also include an address for filing appeals and other documents with the Secretary, and would amend § 44.8 to prohibit ex parte contacts with respect to the merits of any case between the Secretary, and any parties, intervenors, representatives, or other interested persons. Other amendments would recognize changes to existing § 44.16, discussed above, and § 44.50, discussed below. These would include deletion of § 44.4(b), and deletion of references to §§ 44.16(i) and 44.50(b)(10) in §§ 44.6 (b) and (e).

*Department of Interior Cases.* Existing Part 44 includes a number of references to pending petition for modification cases transferred to the Department of Labor from the Department of the Interior when MSHA was created in

1978. No such petitions are currently pending before MSHA. All have reached final decision. Accordingly, MSHA anticipates that the final rule would delete §§ 44.2(f), 44.7, 44.33(d), and that part of § 44 35 which references § 44.33(d).

*Filing of petitions and related documents.* The existing rules require petitions to be filed with the Assistant Secretary. After filing, MSHA's Office of Standards, Regulations, and Variances coordinates petitions between the Agency's Coal Mine and Metal Nonmetal Mine Safety and Health sections. Recognizing this role, MSHA anticipates that the final rule will amend § 44.10 to specify filing petitions directly with the Director of the Office of Standards, Regulations, and Variances.

MSHA solicits comments on whether the final rule should include amendments that would define filing, and would explicitly permit documents to be filed or served by means other than by hand or by mail. Under the existing rules, a petition, notice of appeal, brief, or other document is generally considered to be filed when received, rather than when mailed, and MSHA believes that this practice should continue. However, at this stage in rulemaking MSHA also believes that filing and service should be permitted to be made electronically or by other means consistent with current technology. After consideration of the comments received, MSHA will make appropriate changes regarding these procedural issues in the final rule. Also, to be consistent with similar procedural rules of other federal agencies, MSHA is considering an amendment of § 44.6(f) to allow five days to be added to prescribed time periods when parties have made service by mail. The existing rule allows three days to be added.

*Federal Register notices.* Existing § 44.12(c) requires a notice to be published in the Federal Register, after a petition is filed, which includes a summary of the facts claimed by the petitioner to warrant the requested modification. Also, after a petition is granted, § 44.5(a) requires notice of the granted modification to be published in the Federal Register.

In the final rule, MSHA anticipates that these requirements would be modified and eliminated, respectively. In the Agency's experience, including a summary of the facts claimed to support the petition in the notice document is an unnecessary step which can add time to preparation of the original Federal Register notice. In light of the fact that notice would still be required to be given to all parties to the petition, and the petition would be available to all parties, MSHA believes that a short description of the requested modification will serve as adequate notice in the Federal Register. Similarly, since all parties to petitions are apprised of final actions granting petitions, MSHA believes that publishing notice of granted petitions in the Federal Register is also unnecessary.

*Relief Pending Appeal.* MSHA proposes to delete existing § 44.50, which provides a procedure whereby an applicant can petition an administrative law judge or the Assistant Secretary to give effect to a favorable decision below during the pendency of an appeal. Since an application for relief pending appeal amounts to little more than a motion to expedite a decision on the petition for modification, the Agency believes that the relief pending appeal rule would serve no additional purpose and therefore should be deleted. The proposal instead sets a time schedule for decisionmaking in the petition process and provides opportunities for the parties to request expedition of various stages of the process in appropriate cases.

Under the existing rule, few requests for relief pending appeal have ever been filed. The Agency believes, therefore, that the impact of deleting the provision will be minimal.

### III. Executive Order 12291 and the Regulatory Flexibility Act

The Agency has determined that this rule will not result in a major cost increase nor have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

### IV. Paperwork Reduction Act

The proposal does not introduce new recordkeeping requirements and will not change existing recordkeeping burdens associated with filing petitions for modification.

### List of Subjects in 30 CFR Part 44

Mine safety and health, Rules of practice for petitions for modification of mandatory safety standards, Temporary relief, and Relief pending appeal.

Date: May 1, 1989.

**David C. O'Neal,**

*Assistant Secretary for Mine Safety and Health.*

Accordingly, it is proposed to amend Subparts A, B, C, D and E, Part 44, Chapter I, Title 30 of the Code of Federal Regulations as follows:

## PART 44—RULES OF PRACTICE FOR PETITIONS FOR MODIFICATION OF MANDATORY SAFETY STANDARDS

1. The authority citation for Part 44 is revised to read as follows:

Authority: 30 U.S.C. 957.

**§§ 44.6, 44.21, 44.27, 44.33, 44.40, 44.41 and 44.51 [Amended]**

2. In the following sections the words "Assistant Secretary" are changed to "Secretary": §§ 44.6(f), 44.21(a), 44.27(b)(3), 44.33(a), 44.33(b), 44.40(e), 44.41(a), and 44.51.

3. Section 44.13 is revised to read as follows:

**§ 44.13 Proposed decision.**

(a) Upon receipt of a petition for modification, the Mine Safety and Health Administration shall cause an investigation to be made as to the merits of the petition. Any party may request that the investigation of the petition for modification be expedited, or that the time period for investigating the petition be extended. Such requests shall be granted in the discretion of the Administrator.

(b) As soon as is practicable after the investigation, the appropriate Administrator shall serve upon all parties to the proceeding a draft proposed decision and order based upon all available information, including the results of the investigation. Parties to the proceeding shall have 20 days after service of the draft decision and order to submit written comments. At the request of any party, the Administrator may, in his or her discretion, waive the draft decision and order.

(c) Within 45 days after the close of the comment period on the draft decision and order, the appropriate Administrator shall make a proposed decision and order, which shall be served upon all parties to the proceeding. The proposed decision shall become final upon the 30th day after service thereof, unless a request for hearing has been filed with the appropriate Administrator, as provided in § 44.14 of this part.

(d) Service of the proposed decision and the draft decision is complete upon mailing.

4. Section 44.15 is revised to read as follows:

**§ 44.15 Referral to Chief Administrative Law Judge.**

Upon receipt of a request for hearing as provided in § 44.14 of this part, the

Administrator shall immediately refer to the Chief Administrative Law Judge the original petition, the proposed decision and order, all information upon which the proposed decision was based, any written request for a hearing on the petition filed, and any other written comments or information received and considered in making the proposed decision. The results of the investigation and any staff recommendation shall be made a part of the record on the petition.

5. Section 44.16 is revised to read as follows:

**§ 44.16 Application for relief to give effect to the proposed decision and order.**

(a) At any time following the Proposed Decision and Order of the Administrator on the accompanying petition for modification, any party may request relief to give effect to such Proposed Decision and Order until it becomes final.

(b) An application for such relief shall be filed with the Administrator and shall include a good faith representation that no party is expected to contest the granting of the petition for modification.

(c) A decision to grant relief under this section will take effect on the seventh day following the decision. If a request for hearing on the Proposed Decision and Order is filed prior to the seventh day following the granting of such relief, the relief will not become effective. If a request for hearing on the Proposed Decision and Order is filed after relief becomes effective, the relief will expire immediately.

6. Section 44.20 is revised to read as follows:

**§ 44.20 Designation of administrative law judge.**

Within 5 days after receipt of a request for hearing in a petition for modification proceeding, the Chief Administrative Law Judge shall designate an administrative law judge appointed under section 3105 of title 5 of the United States Code to preside over the hearing.

7. Section 44.24 is revised to read as follows:

**§ 44.24 Discovery.**

Parties shall be governed in their conduct of discovery by appropriate provisions of the Federal Rules of Civil Procedure, except as provided in § 44.25 of this part. After consultation with the parties, the administrative law judge shall prescribe a time of not more than 45 days to complete discovery. Requests to extend the discovery period or to shorten the discovery period may be granted in the discretion of the presiding administrative law judge. As soon as is practicable after completion of discovery, the administrative law judge shall schedule a hearing in accordance with § 44.28.

8. Section 44.27(b)(2), is revised to read as follows:

**§ 44.27 Consent findings and rules or orders.**

* * * * *

(b) * * *

(2) That the record on which any rule or order may be based shall consist of the petition and agreement, and all other pertinent information, including: any request for hearing on the petition; the MSHA investigation and any staff recommendation on the petition; discovery, motions and requests, filed in written form, and rulings thereon; any documents or papers filed in connection with prehearing conferences; and, if a hearing has been held, the transcript of testimony and any proposed findings, conclusions, rules or orders, and supporting reasons as may have been filed.

* * * * *

9. Section 44.31 is revised to read as follows:

**§ 44.31 Proposed findings of fact, conclusions, and orders.**

After consultation with the parties, the administrative law judge may prescribe a time period of 30 days within which each party may file proposed findings of fact, conclusions of law, and rule or order, together with a supporting brief expressing the reasons for such proposals. Such time may be expedited or extended upon request and at the discretion of the Administrative Law Judge. Proposals and briefs shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

10. Paragraph (a) in § 44.32 is revised to read as follows:

**§ 44.32 Initial decision.**

(a) Within 60 days after the time allowed for the filing of proposed findings of fact and conclusions of law, the administrative law judge shall make and serve upon each party the decision, which shall become final upon the 30th day after service thereof, unless an appeal is filed as provided in § 44.33 of this part. After consultation with the parties, the specified time for the Administrative Law Judge's decision may be expedited or extended. The decision of the administrative law judge shall include:

(1) A statement of findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact, law, or discretion presented on the record; and

(2) The appropriate rule, order, relief, or denial thereof.

* * * * *

11. Section 44.34 is revised to read as follows:

**§ 44.34 Transmittal of record.**

If an appeal is filed, the administrative law judge shall, as soon thereafter as is practicable, transmit the record of the proceeding to the Secretary for review. The record shall include: the petition; the results of the investigation; any MSHA staff recommendation; any request for hearing thereon; motions and requests filed in written form; rulings thereon; the transcript of testimony taken at the hearing, together with exhibits admitted in evidence; any documents or papers filed in connection with prehearing conferences; such proposed findings of fact, conclusions of law, rules or orders, and supporting reasons, as may have been filed; and the administrative law judge's decision.

12. Section 44.35 is revised to read as follows:

**§ 44.35 Decision of the Secretary.**

Appeals from a decision rendered pursuant to § 44.32 of this part shall be decided by the Secretary as promptly as practicable after the time for filing responding statements under § 44.33 of this part. The Secretary's decision shall be based upon consideration of the entire record of the proceedings transmitted, together with the statements submitted by the parties. The decision may affirm, modify, or set aside, in whole or part, the findings, conclusions, and rule or order contained in the decision of the presiding administrative law judge and shall include a statement of reasons for the action taken. The Secretary may also remand the petition to the administrative law judge for additional legal or factual determinations. Any party may request that the time for the Secretary's decision be expedited. Such requests shall be granted in the discretion of the Secretary.

**§ 44.50 [Removed]**

13. Section 44.50 is removed.

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Federal Register

Friday
May 5, 1989

Part IV

# Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines; Notice of Decision

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 36**

**[Docket No. 25206; Notice No. 87-2]**

## Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of decision.

**SUMMARY:** This notice announces the decision of the FAA, after consideration of the public comments submitted to the FAA in response to its Advanced Notice of Proposed Rulemaking (ANPRM) No. 87-2, to discontinue that rulemaking. The ANPRM sought public comments on the need for modifications to current noise and emission standards as they apply to the emerging generation of advanced turboprop (propfan) engines and the aircraft powered by them. At this time further rulemaking action is inappropriate. Before the FAA can determine whether any additional standards and regulations are necessary to govern the noise characteristics of the advanced turboprop (propfan) engines, the agency must first conduct the analysis required by section 611(b)(2) and (d) of the Federal Aviation Act of 1958 (49 U.S.C. 1431) (The Act). That analysis, also referred to as a Noise Control Act finding, must be conducted before the FAA may issue an original type certificate under section 603(a) of the Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards. In conducting the Noise Control Act analysis, the FAA must consider a number of economic and technological factors in addition to studying the noise characteristics of this technology. Only after this analysis has been performed will the FAA be able to determine whether additional noise standards are necessary or appropriate.

In order to perform this analysis in a timely manner, the FAA will seek to enter into a joint research effort with the National Aeronautics and Space Administration (NASA) and industry. The results of this research would be made available for public comment. The interested public is also invited to comment on the study of en route noise as well as the other factors the agency must consider in determining whether any rule should be promulgated. A new docket will be opened for that purpose.

Further, the FAA has determined that the current EPA emissions standards, and the FAA rules governing their application, are adequate for application to propfan-powered aircraft.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard N. Tedrick (AEE-3), Office of Environment, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone, (202) 267-3577.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Background

Since its adoption in 1969 (34 FR 18364, Nov. 18, 1969), Part 36 of the Federal Aviation Regulations (FAR) (14 CFR Part 36) has contained noise level standards for the type certification of large transport category airplanes and turbojet-powered airplanes regardless of category. FAR, Part 36, contains the test conditions and methods for demonstrating compliance. It also contains the noise level limits for takeoff, approach, and sideline noise measurements. Limited "tradeoffs" are allowed where the exceedances at one or two measuring points are matched by reductions of the others.

The FAR, Part 36, noise standards were designed to encourage application of the noise reduction technology that is most effective for operations that occur at airports, i.e., takeoffs and landings. The FAA decided to consider whether Federal action is needed to set en route noise standards for aircraft.

With respect to aircraft engine emissions, section 232 of the Clean Air Act Amendments of 1970, Pub. L. 91-604, assigns the FAA the duty to issue regulations that ensure compliance with all aircraft emissions standards promulgated by the U.S. Environmental Protection Agency (EPA) under section 231 of the Act. Those standards are prescribed in 40 CFR Part 87, originally issued on July 6, 1973. Accordingly, on December 26, 1973, the FAA issued Special Federal Aviation Regulation (SFAR) 27 to ensure compliance with those standards. On December 8, 1983, the FAA amended SFAR 27 to incorporate later EPA revisions to 40 CFR Part 87 which included separate standards for turboprop engines and turbojet and turbofan engines.

Because the new generation of propfan engines incorporates characteristics of both turboprop and turbofan engines, on March 13, 1987, the FAA published an Advance Notice of Proposed Rulemaking No. 87-2 (52 FR 8050), which provided for a 120-day comment period closing on June 11, 1987. At the request of the Aerospace Industries Association of America, Inc., the FAA amended its earlier notice and extended the comment period to October 1, 1987.

In preparing this notice, the FAA fully considered all comments submitted to Docket No. 25206. For the reasons stated below, this rulemaking docket is hereby terminated.

### Review of Comments

A number of interested persons commented and provided information on the need, if any, for setting en route noise levels, on the appropriateness of setting certification noise level standards on propfan-powered airplanes at this time and on the classification of propfan engines for purposes of determining applicable enforcement of emission standards.

Of the 26 comments received, there was a wide difference of opinion. Many opposed any rulemaking. Others questioned whether existing data show a need for rulemaking. Still others supported the setting of a standard. As a result of the issues raised by many of the commenters and further consideration of the issues and consultation with both national and international experts, the FAA has determined that the most appropriate course of action is for the FAA to conduct the analysis required by the Noise Control Act of 1972, which amended the Federal Aviation Act of 1958. The program outlined below is intended to obtain and consider additional information to expedite the FAA's Noise Control Act finding.

A significant number of the commenters addressed the emissions issue. The majority of those commenters stated that the existing standards, with some minor revisions, are entirely adequate and that no new standards are required. These commenters, including the Aerospace Industries Association of America, Inc., recommended that the emissions standards for turbojet and turbofan engines be applicable to the propfan engines currently under development. With two prototype engines in development, and standards for aircraft and aircraft engine emissions already established, the FAA agrees that the same or equivalent standards as those applied to turbojet and turbofan engines should be applied to these propfans. Thus, the FAA has determined not to pursue any additional standards.

**Decision**

*Noise*

At this time it appears that the FAA will certificate aircraft using advanced turboprop engines by means of a new, or original type certificate. Although the law is silent concerning when a new, rather than amended certificate is required, it is the FAA's view that the Noise Control Act was intended to address technological changes which significantly affect aircraft noise characteristics. Based on the studies, testing, and comments in response to the ANPRM, it is the FAA's view that the different noise characteristics of propfan engines may well trigger the statutory requirement to make a Noise Control Act finding.

Section 611(b)(2) of the Federal Aviation Act of 1958, as amended, provides:

> The FAA shall not issue an original type certificate under section 603(a) of this Act for any aircraft for which substantial noise abatement can be achieved by prescribing standards and regulations in accordance with this section, unless he shall have prescribed standards and regulations in accordance with this section which apply to such aircraft and which protect the public from aircraft noise and sonic boom, consistent with the considerations listed in subsection (d).

Among the considerations listed in subsection (d) is paragraph (4), which states:

> (C)onsider whether any proposed standard or regulation is economically reasonable, technologically practicable, and appropriate for the particular type of aircraft, aircraft engine, appliance, or certificate to which it will apply(.)

In order for the FAA to conduct the inquiry required under section 611(b)(2), and specifically to consider the factors listed in subsection (d), the FAA has decided that additional information must be developed. Therefore, the FAA will seek to enter into an accelerated joint research effort with NASA and industry. This program would build on cooperative projects already completed or underway. Work would fall into four general areas:

—*Atmospheric Propagation.* Substantial information was developed in an earlier joint NASA/FAA/Air Force test program on the propagation of noise from high altitudes. Additional tests are planned with NASA during the spring of 1989 to obtain data for other atmospheric conditions and further quantify the wind and thermal effects on propagation.

—*Human Response.* NASA's Langley Research Center will conduct controlled studies to better quantify human response to noise from high altitude sources. These studies will measure relationships between detection and annoyance for such sounds. The effects of background noise ratio and attenuation through residential structures will be included.

—*Community Response.* A symposium will be sponsored on the measurement and prediction of community response to noise from high altitude sources.

—*Economic Reasonableness and Technological Practicability.* Industry will be requested to develop noise/cost relationships for each major commercial family of propfan-powered airplanes. Specific information will be developed on the cost and other impacts of applying noise reduction to various airplane/engine combinations.

The results of this research, in addition to the comments previously received in response to the ANPRM, will be used by the FAA to perform the noise analysis required by section 611 prior to certification. The FAA will make the results of this research available to the public. Persons having information pertinent to these points of inquiry are encouraged to provide it to FAA. Also, persons wishing to comment on the scope of inquiry are invited to do so. The FAA will establish a new docket for this purpose.

Only if the research indicates that substantial noise abatement can be achieved by prescribing additional standards would additional standards be considered. In determining whether to establish any standard, the FAA must consider the factors enumerated in section 611(d).

In determining the economic reasonableness of any standards or regulation governing the noise characteristics of aircraft using propfan engines, the agency will take into consideration not only the cost to industry in complying with any such standards, but the economic benefits, such as fuel efficiencies, that such new technology promises.

Further, in determining whether any en route noise standard is appropriate, the FAA will evaluate whatever noise reduction at take-off and landing points may be achieved by this new technology. The FAA believes it is consistent with section 611 of the Act and with extant Part 36 standards to give substantial weight to such reductions in noise at points that have traditionally been of greatest concern to the public.

Finally, in determining both the economic reasonableness and the appropriateness of any additional noise standard applicable to propfan technology, the FAA will consider whether such a standard may be met by existing or future technology in the absence of further agency regulation. In response to the ANPRM, some commenters noted that the industry will produce propfan engines that will not exceed current Part 36 standards.

*Emissions*

Because propfan engines are intended to succeed or replace existing turbojet or turbofan engines, for which engine emissions standards are already established, the FAA has determined that the same or equivalent standards should be applied to those engines. All manufacturers of propfan engines, shrouded or unshrouded, should, therefore, be prepared to meet the same, or equivalent emissions standards as those applied to turbojet and turbofan engines.

In the event of unique or unusual designs, petitions for limited exemptions will be considered if the existing standards prove unduly burdensome or inequitable. The FAA, however, has no authority to revise or amend the Part 87 standards.

In applying the current standards, the FAA finds that neither the physical appearance nor the component description is sufficient to determine the appropriate generic type certification standards. Further, SFAR 27 applies not only to certification, but also to installation and operation of the aircraft and aircraft engine. The application, type certification requested, installation, and method of operation are all important criteria in determining the applicable aircraft and aircraft engine emissions standards. No single criterion will be used to determine the applicability of the aircraft and aircraft

engine emissions standards to a particular type design. The two known prototype designs which are currently in development would appear to be in the category of turbojet and turbofan standards, but a final determination cannot be made until a production configuration is defined and application is made for a type certificate. If an aircraft or aircraft engine is not suspectible to testing by the procedures set forth in 40 CFR Part 87, the Administrator (of the EPA) or the Secretary (of DOT), after consultation with each other, upon written application by a manufacturer or operator of aircraft or aircraft engines, may approve alternate test procedures (§ 87.5).

Issued in Washington, DC, on April 28, 1989.

**Robert E. Whittington,**

*Acting Administrator.*

[FR Doc. 89-10857 Filed 5-4-89; 5489; 8:45 am]

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Friday
May 5, 1989

Part V

# Department of Education

**Pell Grant Program; Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1988–89 Award Year; Notice**

## DEPARTMENT OF EDUCATION

### Pell Grant Program; Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1988–89 Award Year

**AGENCY:** Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Secretary announces the deadline dates for the receipt of documents from persons applying for financial assistance under, and from institutions participating in, the Pell Grant Program during the 1988–89 award year.

**SUPPLEMENTARY INFORMATION:** The Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their educational costs. Authority for the Pell Grant Program is contained in sections 411 through 411F of the Higher Education Act of 1965, as amended (HEA) 20 U.S.C. 1070a through 1070a–6. The regulations for the Pell Grant Program are codified in 34 CFR Part 690 and 34 CFR Part 668.

### I. Applications for Determination of Expected Family Contribution—Table I

As a requirement for receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education, a valid Student Aid Report (SAR) that states the amount of the student's expected family contribution (referred to on the SAR as the "SAI" (student aid index)) and the information used in calculating that amount. Therefore, each applicant must first submit to an agency listed in Table I of this notice his or her application for determining the expected family contribution. That application—hereafter referred to in this notice as an original application—must be submitted on one of the forms shown in Table I and be received by the designated agency at the agency's address shown in Table I.

*Applications of Students Receiving a "Dependency Override"*

If the financial aid administrator at the institution an applicant is attending determines that the applicant qualifies as an independent student under section 411F(12)(B)(vii) of the HEA or that he or she qualifies as a dependent student under section 411F(12)(C) of the HEA, the applicant must submit a "correction application" to one of the agencies listed in Table I. If the applicant has submitted an original application, the deadline date for the submission of the correction application is July 31, 1989.

It should be noted that an application sent to the Federal Student Aid Programs must be received at the U.S. Postal facility indicated in the table. Individuals at the Iowa City application processing center are not authorized to personally accept hand delivered documents. (Approved by the Office of Management and Budget under OMB Control Number Application: 1840–0110)

TABLE I.—SUBMISSION OF APPLICATION FORMS FOR DETERMINING EXPECTED FAMILY CONTRIBUTION

| Type of form | Address for submission |
|---|---|
| Application for Federal Student Aid (AFSA). | Federal Student Aid Programs, P.O. Box 4180, Iowa City, Iowa 52244. |
| Spanish Application for Federal Student Aid. | Federal Student Aid Programs, P.O. Box 4182, Iowa City, Iowa 52244. |
| Family Financial Statement (FFS). | ACT, Student Financial Aid Services, P.O. Box 1000, Iowa City, Iowa 52243. |
| Financial Aid Form (FAF) | College Scholarship Service, CN 6300, Princeton, New Jersey 08541, or College Scholarship Service, Box 24670, Oakland, California 94623. |
| Pennsylvania Higher Education Assistance Agency (PHEAA). | Pennsylvania Higher Education Assistance Agency, P.O. Box 3157, Harrisburg, Pennsylvania 17105. |
| Student Aid Application for California SAAC. | College Scholarship Service, Box 24820, Oakland, California 94623. |
| Illinois State Scholarship Commission Application for Federal and State Student Aid (AFSSA) (34 CFR 690.12). | Illinois State Scholarship Commission, P.O. Box 52745, Jacksonville, Florida 32201 |

### II. Other Documents—Table II

Once an applicant has filed his or her original application, additional information may be necessary. In some cases the agency receiving the original application may request the information. In other cases, the applicant is responsible for initiating a request that additional or alternative information be considered.

The type of information and the forms to be used to report that information are listed in Table II of this notice. Each category designates an address to which the specified information or request must be sent, and the deadline date by which that information or request must be received at that address. However, the applicant must submit to the Federal Student Aid Programs, any changes that he or she wants to be reflected o his or her SAR. The following explains each category:

*Correction Application*

In addition to being used when an applicant receives a "dependency override", the Secretary will send a correction application to an applicant if the applicant's original application lacked sufficient information to be processed. The applicant must include on the correction application all the information necessary to process that application.

If an applicant has misreported his or her dependency status, or if that status has changed after the applicant submitted an original application for reasons other than a change in marital status, the applicant must submit a correction application with the correct dependency status.

A correction application may be obtained from a financial aid administrator, an Educational Opportunity Center counselor, or by writing to Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044. The correction application must be returned to the address listed in Table II and received at that address no later than July 31, 1989, unless the correction application is submitted as an original application.

*Student Aid Report (SAR)*

- *Correction/Verification of Information Requested by the Secretary*—If the Secretary returns an SAR to an applicant for correction or verification of correct information, the applicant must correct or verify the information and return the SAR to the appropriate address listed in Table II. The SAR must be received at that address no later than July 31, 1989. A student attending an institution participating in the Pell Grant Electronic Data Exchange must submit that SAR, with the information corrected or verified, to the institution by July 31, 1989.
- *Correction of Inaccurate Information*—If the SAR reflects information that was inaccurate when the application was signed, the applicant must correct that information on the SAR and send the SAR to the address listed in Table II. The SAR must be received no later than July 31, 1989. A student attending an institution participating in the Pell Grant Electronic Data Exchange must submit that SAR, with the information corrected, to the institution by July 31, 1989.
- *Recomputation of Student Aid Index*—An applicant may request on the SAR that the Secretary recompute his or her student aid index, if—(1) The student believes a clerical or arithmetic error has occurred or (2) the student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States. The applicant must send the SAR to the address listed in Table II. The SAR must be received no later than July 31, 1989. A student attending an institution

participating in the Pell Grant Electronic Data Exchange must submit a request for recomputation to the institution by July 31, 1989.

• *Request for Duplicate SAR*—If an applicant wishes to receive a duplicate SAR, the applicant may write to one of the addresses listed in Table II, or call one of the phone numbers listed in Table II. A written request must be received no later than July 31, 1989. All telephone requests must also be made no later than July 31, 1989. It should be noted that a written request sent to the Federal Student Aid Programs must be received at the U.S. Postal facility indicated in Table II. Individuals at the Iowa City application processing center are not authorized to personally accept hand delivered documents.

(Approved by the Office of Management and Budget under OMB Control Number 1840–0132)

TABLE II.—DEADLINE DATES FOR RECEIPT OF OTHER DOCUMENTS: JULY 31, 1989

| Type of form/information | Address for submission |
|---|---|
| Correction Application (subsequent transactions only): | |
| Application for Federal Student Aid Correction Application. | Federal Student Aid Programs, P.O. Box 4183, Iowa City, IA 52244. |
| Student Aid Report (SAR) Correction/Verification of Information Requested by the Secretary; request for verification of corrected information. | Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244. |
| Correction of Inaccurate Information (except address correction); request for correction of inaccurate information. | Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244. |
| Request for Correction of Address. | Federal Student Aid Programs, P.O. Box 4184, Iowa City, IA 52244. |
| Recomputation of Student Aid Index: Request for recomputation of a student aid index because of: (1) Clerical or arithmetic errors or (2) loss of or damage to assets in Presidentially-declared national disaster area. | Federal Student Aid Programs, P.O. Box 4152, Iowa City, IA 52244. |
| Request for Duplicate SAR: Request in writing or request by phone. | Federal Student Aid Programs, P.O. Box 4184, Iowa City, IA 52244, (319) 337–3738 or Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044, (301) 984–4070. |

(34 CFR 690.14, 690.39, 690.48)

**Note:** Although the Department of Education's application processing center will accept and process corrections through July 31, 1989, this does not extend the deadline by which the student must submit his or her valid SAR to the institution's financial aid office. If the student does not submit a valid SAR to the financial aid office, showing that he or she is eligible, by his or her last date of enrollment or June 30, 1989, whichever is earlier, he or she will not be eligible for a Pell Grant payment.

## III. Verification Procedures and Deadline Dates

The information provided on an application and included on an SAR may be subject to verification. In that case, in order to receive a Pell Grant award for the 1988–89 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures. The documents must be received no later than the deadline dates specified below. These dates do not conflict with nor supersede the deadline dates specified in Tables I and II of this notice.

*Verification of Information on Application*

If an applicant is selected to have the information on his or her application verified under the verification procedures set forth in Subpart E of the Student Assistance General Provisions, he or she must submit the requested documents as specified below. The deadline date for the submission of the requested documents for the verification process is the earlier of: 60 days from the applicant's last date of enrollment in the case of an applicant who leaves school because of graduation, completion of an academic term, or withdrawal; or September 1, 1989. A student who will still be enrolled in a course of study in the 1988–89 award year after September 1, 1989, must submit the requested documents by September 1, 1989.

This process is complete when the applicant has:

(1) Submitted all requested verification documents to his or her institution;

(2) Made all necessary corrections on Part 2 of the SAR:

(3) Signed and submitted the corrected Part 2 of the SAR to the Department of Education's processing center at the address indicated on the back of Part 2 of the SAR—the same address indicated in Table II—by the deadline date listed in Table II; and

(4) Submitted to the institution the corrected/reprocessed SAR received from the Department of Education's processing center. (34 CFR 668.60.)

## IV. Institutional Payment Summary (IPS)—Table III

An institution participating in the Pell Grant Program is required to provide the Secretary with an Institutional Payment Summary (IPS) and Part 3 of the SARs (Payment Documents) for all students receiving awards by the closing dates established in Table III. This material should be sent to the following address, in the manner described below: Pell Grant Program, P.O. Box 1400, Merrifield, Virginia 22116–1400.

• Each institution must submit an IPS with Student Payment Documents reflecting the information contained on Part 3 of the SAR.

• An institution may submit an IPS without a batch of Payment Documents only under one of these circumstances:

(1) The institution has no Pell recipients, or

(2) The institution has no new Pell recipients or payment data changes to submit within a given reporting period for previously reported students.

An institution must submit a signed, accurate Institutional Payment Summary. Photocopies of the IPS may be submitted provided that each copy contains the original handwritten signature of the institutional administrator officially responsible for the accuracy and completeness of the IPS. Although an institution may make a submission as often as necessary during each of the required reporting periods shown in Table III, it must make at least one submission within each of those periods, even if it submits only an IPS under the conditions noted above. Submissions must be made no later than the closing date for each reporting period noted in Table III.

An institution participating in the Pell Grant Program must either:

(1) Submit the documents or data tapes to the above address in the manner described above; or

(2) Provide to the Pell Grant Disbursement System a properly certified and acceptable electronic payment data submission via the Pell Grant Electronic Data Exchange. This submission must be made at least once during each of the stated periods.

TABLE III.—REPORTING DATES FOR RECEIPT OF INSTITUTIONAL PAYMENT SUMMARY (IPS) DOCUMENTS

| Reporting Periods | Closing date |
|---|---|
| Institutions with a 1987–88 Pell Grant Authorization of $750,000 or more: | |
| July 1, 1988 thru Oct. 15, 1988 | Oct. 15, 1988 |
| Oct. 16, 1988 thru Dec. 15, 1988 | Dec. 15, 1988 |
| Dec. 16, 1988 thru Feb. 15, 1989 | Feb. 15, 1989 |
| Feb. 16, 1989 thru Apr. 15, 1989 | Apr. 15, 1989 |
| Apr. 16, 1989 thru June 15, 1989 | June 15, 1989 |
| June 16, 1989 thru Aug. 15, 1989 | Aug. 15, 1989 |
| Institutions with a 1987–88 Pell Grant Authorization under $750,000: | |
| July 1, 1988 thru Dec. 15, 1988 | Dec. 15, 1988 |
| Dec. 16, 1988 thru Apr. 15, 1989 | Apr. 15, 1989 |
| Apr. 16, 1989 thru Aug. 15, 1989 | Aug. 15, 1989 |

(34 CFR 690.83)

(Approved by the Office of Management and Budget under OMB Control Number IPS Form 1840–0540)

Failure of an institution to comply with these requirements may result in

the initiation of a proceeding to fine, suspend, limit, or terminate the institution in accordance with Subpart G of the Student Assistance General Provisions regulations in 34 CFR Part 668.

**V. Submission to the Secretary of Student Aid Reports by Institutions**

As noted above, Table III requires an institution to submit at least one IPS (and SAR Payment Documents, if applicable) within each of the required reporting periods. However, because 34 CFR 690.83 requires an institution to submit 1988–89 SAR Payment Documents to the Secretary of Education by December 31, 1989, an institution with additional IPS's and Payment Documents may submit them until the end of the year.

Institutions will not be permitted to adjust their Pell Grant accounts after December 31, 1989 for award year 1988–89 or any award years prior to 1988–89 except under the circumstances listed below. This deadline has been established to permit an orderly closing of accounts from previous years.

- Adjustments are required by a program review of the institution's records by an official or employee of the Department of Education.
- Adjustments are required by an official of the Department of Education as a result of an audit conducted under the requirements of 34 CFR 690.84.
- The institution is required to adjust a student's award because of a court order.
- The institution discovers that a student has been overpaid.
- Verification cases referred to the Department where the student has only received partial payment or no payment and verification cannot be completed in time to meet the December 31 deadline.

**Note.**—This means that an institution will not be allowed to adjust its accounts for any underpayment it discovers after December 31 unless the case meets one or more of the conditions described above. If an institution discovers an underpayment, and submits to the Secretary 1988–89 Payment Documents or SAR's for years prior to 1988–89, but none of the circumstances above exists, no adjustment will be made; that is, the institution will not receive additional Pell Grant funds. If it appears that an adjustment must be made because of the above circumstances, the institution should contact an area desk representative at (202) 732–3795.

*Application Forms and Information*

Student aid application forms, correction application forms, and information brochures may be obtained through college and university financial aid administrators, Educational Opportunity Center counselors, or by writing to: Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044.

*Applicable Regulations*

The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR Part 690 and the Student Assistance General Provisions regulations in 34 CFR Part 668.

**FOR FURTHER INFORMATION CONTACT:** Wendy Macias, Program Specialist, Policy Section, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW. (ROB–3, Room 4318), Washington, DC 20202. Telephone (202) 732–4888.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: April 24, 1989.

**James B. Williams,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 89–10877 Filed 5–4–89; 8:45 am]

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federal register

Friday
May 5, 1989

Part VI

# Department of Education

34 CFR Part 280

Magnet Schools Assistance Program; Final Regulations

**DEPARTMENT OF EDUCATION**

**34 CFR Part 280**

**Magnet Schools Assistance Program**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP). These amendments implement changes to the Magnet Schools Assistance Act (Act) (reauthorized as Title III of the Elementary and Secondary Education Act of 1965) made by the Augustus F. Hawkins-Rober T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297). Most of the changes implement additions to and deletions from the statute. Included in these amendments are new selection criteria that address greater parental decisionmaking and involvement and the applicant's capacity to continue the magnet schools program without Federal funds. In addition, special consideration is given to applicants that demonstrate a collaborative effort with institutions of higher education and community-based organizations.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Annie R. Mack, Magnet Schools Assistance Program, 400 Maryland Avenue, SW. (Room 2067, FOB #6), Washington, DC 20202–6440, (202) 732–4358.

**SUPPLEMENTARY INFORMATION:** On November 14, 1988 the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (53 FR 45874–76). Except for a new paragraph added to § 280.42, described below, and minor technical revisions, there are no differences between the NPRM and these final regulations.

Section 280.42 implements section 3011(a)(2) of the Act, which limits to 15 percent of its grant the amount a local educational agency (LEA) may carry over from one budget period to the next budget period. This limitation is waived for any year in which grants are not awarded in a timely manner. Several commenters requested clarification on when an award would be considered untimely. The main factor the Secretary will consider in determining the timeliness of an award is whether—given the date of the award—the grantee will be able to carry out grant activities without carrying over more than 15 percent of its grant into the subsequent grant period. A new paragraph (c) is added to § 280.42 to explain these considerations.

*Analysis of Comments and Changes*

In response to the Secretary's invitation in the NPRM, 21 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are discussed under the section of the regulations to which they pertain.

*Section 280.4(b): Definitions*

*Comment:* One commenter suggested that the Secretary define "community-based organization" to correspond to the definition in the Job Training Partnership Act, 29 U.S.C. 1503(5).

*Discussion:* Though the Secretary recognizes that it is helpful to applicants for Federal funds to use terms consistently in different Federal programs, section 6301 of Pub. L. 100–297 requires the Secretary to use the definition of "community-based organization" in section 1471 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965.

*Changes:* None.

*Section 280.31(g): Selection Criterion for Commitment and Capacity*

*Comments:* A number of commenters recommended changes to or clarification of this selection criterion. One commenter recommended that the section be changed to clarify that an LEA is expected to assume only continuing costs of its magnet schools program; another questioned whether an LEA would be expected to provide the same level of support for the program without MSAP funds. Another commenter stated that the reference in the criterion to a plan for gradual assumption of costs exceeds the intent of the Act, because the law requires only that the applicant provide a description of the manner in which it will continue the magnet schools program. Other commenters recommended that the reference to gradual assumption of costs be deleted.

*Discussion:* Section 3007 of the Act requires an applicant to certify that it will "provide a description of the manner in which the local educational agency will continue the magnet schools program after assistance under (the Act) is no longer available." In § 280.20(g), the Secretary has implemented this provision by requiring that an applicant provide this description in its application. In addition, under § 280.31(g), the Secretary will base part of the evaluation of an application on this description. In making this assessment, the Secretary will look for information that shows the applicant's "commitment to the magnet schools program" and "plan for the gradual assumption of program costs." The regulation should not be interpreted to mean that an applicant is expected to develop an itemized plan for how it will assume each cost of operating its magnet schools program. The applicant is not expected to prepare a revenue study or otherwise locate all non-MSAP sources of funding for its magnet schools program. One-time costs such as the acquisition of equipment need not be discussed. While it would not be appropriate for the Secretary to estimate the level of expenditure required, the Secretary is interested in information that shows that the applicant has considered how it could use other resources to continue supporting a magnet schools program and that it is committed to continuing the program. The Secretary believes that the reference to a plan for gradual assumption of program costs is consistent with the statutory language, since it would not be possible for a local educational agency to "describe the manner" in which it will continue the magnet schools program without describing how it will pay for the program when it no longer is receiving MSAP funds.

*Changes:* None.

*Section 280.33: Distribution of Funds in Excess of $75 Million*

*Comments:* Several comments were received concerning how the Secretary proposes to distribute magnet schools funds in excess of $75 million. Some commenters recommended that, in distributing funds in excess of $75 million, the Secretary give an absolute preference to LEAs that did not receive a magnet schools grant in the previous funding cycle. Other commenters supported the point system proposed in the regulations because that system would give preference to previously unfunded LEAs but at the same time ensure that the quality of the applications would be taken into account. Another commenter recommended that the additional points be increased from 10 to 25, while other commenters suggested that the

regulations clarify that the additional points are added to the applicant's standardized score, not the raw score.

*Discussion:* The statute directs the Secretary, in awarding funds appropriated in excess of $75 million, to give priority to applicants that did not receive a magnet schools grant in the last fiscal year of the previous funding cycle. However, the statute does not specify how much weight is to be given to these applications. The Secretary determined that a point system would best implement the statutory priority, reflect the legislative history of this provision, and ensure that a uniform standard of quality and need would be used in evaluating all applications.

In determining the number of points that should be awarded to the previously unfunded applicants, the Secretary tested several different numbers by applying the proposed selection system to the rank-ordered list of fiscal year 1987 applicants.

Based on the results of these tests, the Secretary determined that awarding 10 points to previously unfunded applicants yielded the most equitable results, by ensuring that both the quality of the applications and the previous funding status would be considered. Awarding amounts higher than 10 points had the result of eliminating all previously funded applicants, even those with high-quality applications, while numbers smaller than 10 gave only minimal weight to previous funding status.

On the issue of whether the additional 10 points should be applied to the applications' raw scores or standardized scores, it is the Department's practice in all its discretionary programs to convert the standardized score of each application to a whole number and then to add any priority points to that number.

*Changes:* None.

*Section 280.40: Continuation of Awards*

*Comments:* Two commenters asked for clarification of whether activities and schools that have been funded in previous years continue to be eligible to receive funding if competitively selected. The commenters noted that Congress added the word "continuation" to the section of the Act that describes the uses of magnet schools funds. However, it was unclear to the commenters how the Department will treat continuation activities.

*Discussion:* Continuation activities are allowable provided that activities are listed in section 3006 of the Act. Section 3006 permits funds to be used for the "acquisition of books, materials, and equipment * * * necessary for the conduct of programs in magnet schools" and salaries for certified or licensed elementary or secondary school teachers "necessary for the conduct of programs in magnet schools." Thus, funds may be used for ongoing operational support of these activities. In addition, Section 3006 permits funds to be used for "planning and promotional activities directly related to the expansion, continuation or enhancement of academic programs and services offered at magnet schools * * *." Whether a "planning and promotional activity" is an allowable continuation activity will be determined on a case-by-case review of each grantee's project.

*Changes:* None.

*Section 280.41(a): Limitation on Planning Costs*

*Comment:* One commenter asked that the regulations clarify that public relations campaigns do not fall within the 10 percent limitation on planning costs.

*Discussion:* This section of the existing regulations was not revised in the NPRM. Nevertheless, whether a public relations campaign is a planning activity and thereby subject to the 10 percent limitation would be determined on a case-by-case review of an applicant's project.

*Changes:* None.

*Section 280.42: Limitation on Carry-over Funds*

*Comments:* Section 280.42 contains the statutory limitation of 15 percent as the amount of grant funds an LEA may carry over from one fiscal year to the next. The limitation does not apply in a year in which awards are not made in a timely manner. Two commenters requested that the regulations specify June 30 as the date by which awards will be considered "timely."

*Discussion:* Under section 3011(b) of the Act, the Secretary is directed, "to the extent practicable," to make magnet schools awards by June 30. Congress recognized, as does the Secretary, that a date certain cannot be established by which time all awards will be made. Moreover, if an award is not made by June 30, it may still be made in a timely manner, *i.e.*, in time for a grantee to carry out its magnet schools program successfully during the next school year. The Secretary will make every effort to award magnet schools grants by June 30 of each fiscal year. However, in a year when the Secretary is unable to make an award by June 30, the Secretary will consider on a case-by-case basis whether an award to a grantee is timely. The main factor to be considered will be the grantee's ability to carry out grant activities during the grant period—given the date of the award—without carrying over more than 15 percent of its grant into the subsequent grant period.

*Changes:* The Secretary adds paragraph (c) to § 280.42 to explain to grantees what will be considered in determining the timeliness of an award.

**Executive Order 12606**

These regulations will have a positive impact on the family and are consistent with the requirements of Executive Order 12606—The Family. The regulations strengthen the authority and participation of parents in the education of their children. For example, the regulations specifically require that LEAs will carry out a high quality educational program that will encourage greater parental decisionmaking and involvement.

**Executive Order 12291**

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

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**List of Subjects in 34 CFR Part 280**

Civil rights, Desegregation, Education, Education Department, Elementary and secondary education, Grant programs-education, Magnet schools.

Dated: April 21, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program)

The Secretary amends Tile 34 of the Code of Federal Regulations by amending Part 280 as follows:

## PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for Part 280 is revised to read as follows:

Authority: 20 U.S.C. 3021–3032, unless otherwise noted.

2. Section 280.2 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b) respectively, and revising newly redesignated paragraph (b) to read as follows:

**§ 280.2 Who is eligible to apply for a grant?**

* * * * *

(b) The LEA adopted and is implementing on either a voluntary basis or as required under Title VI of the Civil Rights Act of 1964—or will adopt and implement if assistance is made available under this part—a plan that has been approved by the Secretary as adequate under Title VI.

(Authority: 20 U.S.C 3022)

**§ 280.3 [Amended]**

3. Section 280.3(a) is amended by removing "74 (Administration of grants)," adding, after "(Direct grant programs)," the following: "except that § 75.253(c) (relating to reducing a subsequent year's award by the amount remaining available from the grantee's current award) does not apply to this program," removing "78 (Education Appeal Board), and" before "79", removing the period at the end of the paragraph, and adding in its place,", 80 (Uniform Administrative Requirements for State and Local Governments), and 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants))."

4. Section 280.4(b) is amended by adding the definitions of "Community-based organization" and "Institution of higher education" in alphabetical order to read as follows:

**§ 280.4 What definitions apply to this program?**

* * * * *

(b) * * *

"Community-based organization" means a private nonprofit organization that—

(1) Is representative of a community or a significant segment of a community and

(2) Provides educational or related services to individuals in the community.

(Authority: 20 U.S.C. 2891(3))

* * * * *

"Institution of higher education" has the same meaning as in section 1201(a) of the Higher Education Act of 1965, as implemented in 34 CFR § 600.4(a).

(Authority: 20 U.S.C. 2891(10))

* * * * *

5. Section 280.10 is amended by removing the reference "280.2(b)" in paragraph (c) and adding, in its place, "280.2(a)", and by revising paragraph (b) to read as follows:

**§ 280.10 What types of projects does the Secretary assist?**

* * * * *

(b) For the purposes of this part, an approved desegregation plan is a desegregation plan described in § 280.2 (a) or (b).

* * * * *

6. Section 280.20 is amended by revising paragraphs (b)(1), (b)(3), (b)(4) and (b)(5), and adding new paragraphs (b)(6) and (g) and adding an OMB control number to read as follows:

**§ 280.20 How does one apply for a grant?**

* * * * *

(b) * * *

(1) Will use funds made available under this part for the purposes specified in Section 3003 of the Act;

* * * * *

(3) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in the mandatory assignment of students to schools or to courses of instruction within schools of the agency except to carry out the approved desegregation plan;

(5) Will not engage in discrimination based upon race, religion, color, national origin, sex, or handicap in designing or operating extracurricular activities for students; and

(6) Will carry out a high quality education program that will encourage greater parental decisionmaking and involvement.

* * * * *

(g) In addition to including the assurances required by this section, an LEA shall describe in its application—

(1) How assistance made available under this part will be used to promote desegregation; and

(2) The manner in which the LEA will continue the magnet schools program after assistance under this program is no longer available.

(Approved by the Office of Management and Budget under control number 1810–0516)

* * * * *

7. Section 280.31 is amended by removing "and" at the end of paragraph (a)(2)(iii), removing the period at the end of paragraph (a)(2)(iv)(D) and adding, in its place, "; and," adding paragraph (a)(2)(v), revising paragraphs (b)(2)(iv) and (c)(2)(iii)(B), and adding paragraph (g) to read as follows:

**§ 280.31 What selection criteria does the Secretary use?**

* * * * *

(a) * * *

(2) * * *

(v) How assistance made available under this program will be used to promote desegregation.

(b) * * *

(2) * * *

(iv) How the applicant, as part of its nondiscriminatory employment practices will ensure that its personnel are selected for employment without regard to race, religion, color, national origin, sex, age, or handicap.

(c) * * *

(2) * * *

(iii) * * *

(B) Carry out a high quality educational program that will encourage greater parental decisionmaking and involvement.

* * * * *

(g) *Commitment and capacity.* (1) The Secretary reviews each application for information that shows how the applicant will continue the magnet schools program after assistance under this part is no longer available.

(2) The Secretary looks for information that shows the applicant's—

(i) Commitment to the magnet schools program; and

(ii) Plan for gradual assumption of program costs. (Approved by the Office of Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3021–3032)

8. Section 280.32 is amended by removing "(b) through (e)" from paragraph (a) and adding, in its place, "(b) through (f)", removing paragraphs (d)(1), (d)(2), and (d)(3) and the designation "(4)" preceding paragraph (d)(4), and by adding a new paragraph (f) to read as follows:

**§ 280.32 How is special consideration given to applicants?**

* * * * *

(f) *Collaborative efforts.* (5 points) The Secretary determines the degree to which the program or project for which assistance is sought involves the collaborative efforts of institutions of higher education, community-based organizations, the appropriate State educational agency, or any other private organization. (Approved by the Office of

Management and Budget under control number 1810–0516)

(Authority: 20 U.S.C. 3028(b))

**§ 280.34 [Redesignated from § 280.33]**

9. Section 280.33 is redesignated as § 280.34.

10. A new § 280.33 is added to read as follows:

**§ 280.33 How does the Secretary select applications for new grants with funds appropriated in excess of $75 million?**

(a) In selecting among applicants for funds appropriated for this program in excess of $75 million, the Secretary first identifies those remaining applicants that did not receive funds under this program in the last fiscal year of the previous funding cycle.

(b) The Secretary then awards ten additional points to each applicant identified under paragraph (a) of this section.

(Authority: 20 U.S.C. 3021(b)(1))

**§ 280.40 [Amended]**

11. Section 280.40(a) is amended by removing the words "expansion and" and adding, in their place, "expansion, continuation, or".

12. A new section 280.42 is added to read as follows:

**§ 280.42 What is the limitation on the amount of a grant an LEA may carry over into the next fiscal year?**

(a) An LEA may not carry over more than 15 percent of its grant award into a subsequent fiscal year.

(b) The Secretary does not apply the limitation in paragraph (a) of this section to an award under the Magnet Schools Assistance Program that is not made in a timely manner.

(c) In determining whether an award was made in a timely manner, the Secretary considers, given the date of the award, the grantee's ability to carry out grant activities during the grant period without carrying over more than 15 percent of its grant into a subsequent grant period.

(Authority: 20 U.S.C. 3031(a)(2))

13. Section 280.50 is revised to read as follows:

**§ 280.50 May a State reduce the amount of aid given an LEA?**

No State may reduce the amount of State aid with respect to the provision of free public education or the amount of assistance received under Chapter 2 of Title I of the Elementary and Secondary Education Act of 1965, as amended, in any school district of any local educational agency within the State because of assistance made or to be made available to that agency under this part.

(Authority: 20 U.S.C. 3030(c))

**§§ 280.1, 280.3, 280.4, 280.10, 280.20, 280.30, 280.34, 280.40, and 280.41 [Amended]**

14. The citations of authority following each section in this part (except for the citations that appear at the end of any of the revised sections cited above) are revised in accordance with the following chart:

| Section | Old Citation | New Citation |
|---|---|---|
| 280.1 | 20 U.S.C. 4053 | 20 U.S.C. 3023 |
| 280.3 | 20 U.S.C. 4051–4062 | 20 U.S.C. 3021–3032 |
| 280.4 | 20 U.S.C. 4041–4062 | 20 U.S.C. 3021–3032 |
| 280.10 | 20 U.S.C. 4054 | 20 U.S.C. 3024 |
| 280.20 | 20 U.S.C. 4057 | 20 U.S.C. 3027 |
| 280.30 | 20 U.S.C. 4051–4062 | 20 U.S.C. 3021–3032 |
| 280.34 (as redesignated) | 20 U.S.C. 1221e–3(a)(1), 4060(a) | 20 U.S.C. 3030(a) |
| 280.40 | 20 U.S.C. 4056 | 20 U.S.C. 3026 |
| 280.41 | 20 U.S.C. 4059, 4060(b) | 20 U.S.C. 3029, 3030(b) |

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Part VII

# Department of Education

34 CFR Part 81

Grants and Cooperative Agreements Under the General Education Provisions Act; Final Regulations and Notice of Procedure for Requesting Authoritative Guidance

## DEPARTMENT OF EDUCATION

### 34 CFR Part 81

### General Education Provisions Act; Enforcement

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary of Education (Secretary) issues regulations implementing amendments to Part E of the General Education Provisions Act (GEPA) made by Pub. L. 100–297, enacted April 28, 1988. The final regulations in this document contain general procedural rules for proceedings before the Office of Administrative Law Judges (OALJ) authorized by the GEPA amendments and specific rules for OALJ hearings for the recovery of funds.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education's contact person.

**FOR FURTHER INFORMATION CONTACT:** Barry W. Stevens, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., Room 4091, FOB–6, Washington, DC 20202; Telephone: (202) 732–2730.

**SUPPLEMENTARY INFORMATION:** On April 28, 1988, the President signed into law the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297. Section 3501 of that statute comprehensively amends Part E of the General Education Provisions Act (GEPA), which relates to the enforcement of legal requirements under most grant programs administered by the Secretary of Education. On December 2, 1988, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (53 FR 48866). The proposed regulations in that document contained standards and procedures relating to the newly-authorized Office of Administrative Law Judges (OALJ) and hearings for the recovery of funds conducted by the OALJ. These proposed regulations thus implemented the core provisions of the amended statute.

A significant number of technical, procedural, and clarifying changes in the proposed regulations have been adopted in response to public comment. In addition, the proposed regulations have been reorganized into two subparts rather than four for easier use. Subpart A contains general provisions relating to the OALJ and any proceeding conducted by the OALJ, including proceedings designated by the Secretary to be conducted by that office. Subpart B contains the specific rules that apply to OALJ hearings for the recovery of funds under applicable programs. The regulations have been renumbered accordingly. The regulations in Part 81 do not apply to enforcement proceedings for programs that are not applicable programs under Part E of GEPA or to other proceedings outside the jurisdiction of the OALJ even if an Administrative Law Judge from the OALJ is used to conduct those proceedings.

### Analysis of Comments and Changes

In response to the Secretary's invitation to comment, twelve parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Substantive issues are discussed under the section to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are generally not addressed.

### Executive Order 12291

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

### Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

### Assessment of Educational Impact

In the notice of proposed rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Part 81

Enforcement, General Education Provisions Act.

Dated: April 12, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number Does not apply.)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 81 to read as follows:

## PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

### Subpart A—General Provisions

Sec.
81.1 Purpose.
81.2 Definitions.
81.3 Jurisdiction of the Office of Administrative Law Judges.
81.4 Membership and assignment to cases.
81.5 Authority and responsibility of an Administrative Law Judge.
81.6 Hearing on the record.
81.7 Non-party participation.
81.8 Representation.
81.9 Location of proceedings.
81.10 Ex parte communications.
81.11 Motions.
81.12 Filing requirements.
81.13 Mediation.
81.14 Settlement negotiations.
81.15 Evidence.
81.16 Discovery.
81.17 Privileges.
81.18 The record.
81.19 Costs and fees of parties.

### Subpart B—Hearings for Recovery of Funds

81.20 Basis for recovery of funds.
81.21 Measure of recovery.
81.22 Proportionality.
81.23 Mitigating circumstances.
81.24 Notice of disallowance decision.
81.25 Reduction of claims.
81.26 Compromise of claims under General Education Provisions Act.
81.27 Application for review of a disallowance decision.
81.28 Consideration of an application for review.
81.29 Submission of evidence.
81.30 Burden of proof.
81.31 Initial decision.
81.32 Petition for review of an initial decision.
81.33 Review by the Secretary.
81.34 Final decision of the Department.
81.35 Collection of claims.

### Appendix—Illustrations of Proportionality

**Authority:** 20 U.S.C. 1221e–3(a)(1), 1234–1234i, 3474(a), unless otherwise noted.

## Subpart A—General Provisions

### § 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by

the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

**§ 81.2 Definitions.**

The following definitions apply to the terms used in this part:

"Administrative Law Judge" (ALJ) means a judge appointed by the Secretary in accordance with section 451 (b) and (c) of GEPA.

"Applicable program" means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

"Department" means the United States Department of Education.

"Disallowance decision" means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds. Such a decision, referred to as a "preliminary departmental decision" in section 452 of GEPA, is subject to review by the Office of Administrative Law Judges.

"Party" means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

"Recipient" means the recipient of a grant or cooperative agreement under an applicable program.

"Secretary" means the United States Secretary of Education.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1234 (b), (c), and (f)(1); 1234a(a)(1); 1234i; 3474(a))

**§ 81.3 Jurisdiction of the Office of Administrative Law Judges.**

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the **Federal Register**.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

**§ 81.4 Membership and assignment to cases.**

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234 (b) and (c), 3474(a))

**§ 81.5 Authority and responsibility of an Administrative Law Judge.**

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) An ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3(a)(1); 1234(d), (f)(1), and (g)(1); 3474(a))

**§ 81.6 Hearing on the record.**

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) Except as otherwise provided in this part or in a notice of designation under § 81.3(b), an ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At a party's request, the ALJ shall confer with the parties in person or by conference telephone call before determining whether an evidentiary hearing or an oral argument is needed.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

**§ 81.7 Non-party participation.**

(a) A person or organization, other than a party, that wishes to participate in a case shall file an application to participate with the ALJ assigned to the case. The application must—

(1) Identify the case in which participation is sought;

(2) State how the applicant's interest relates to the case;

(3) State how the applicant's participation would aid in the disposition of the case; and

(4) State how the applicant seeks to participate.

(b) The ALJ may permit an applicant to participate if the ALJ determines that the applicant's participation—

(1) Will aid in the disposition of the case;

(2) Will not unduly delay the proceedings; and

(3) Will not prejudice the adjudication of the parties' rights.

(c) If the ALJ permits an applicant to participate, the ALJ permits the applicant to file briefs.

(d) (1) In addition to the participation described in paragraph (c) of this section, the ALJ may permit the applicant to participate in any or all of the following ways:

(i) Submit documentary evidence.

(ii) Participate in an evidentiary hearing afforded the parties.

(iii) Participate in an oral argument afforded the parties.

(2) The ALJ may place appropriate limits on an applicant's participation to ensure the efficient conduct of the proceedings.

(e) A non-party participant shall comply with the requirements for parties in § 81.11 and § 81.12.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

**§ 81.8 Representation.**

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

**§ 81.9 Location of proceedings.**

(a) An ALJ may hold conferences of the parties in person or by conference telephone call.

(b) Any conference, hearing, argument, or other proceeding at which the parties are required to appear in person is held in the Washington, DC metropolitan area unless the ALJ determines that the convenience and necessity of the parties or their representatives requires that it be held elsewhere.

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.10 Ex parte communications.**

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.11 Motions.**

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in § 81.12(d).

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.12 Filing requirements.**

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery or by mail.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d) (1) The filing date for a written submission to an ALJ or the OALJ is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.13 Mediation.**

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f) (1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1) and (h), 3474(a))

**§ 81.14 Settlement negotiations.**

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or the approval of a settlement agreement, the ALJ grants the stay.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 554(c)(1), 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.15 Evidence.**

(a) The Federal Rules of Evidence do not apply to proceedings under this part. However, the ALJ accepts only evidence that is—

(1) Relevant;

(2) Material;

(3) Not unduly repetitious; and

(4) Not inadmissible under § 81.13 or § 81.14.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.16 Discovery.**

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) The ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Make relevant documents available for inspection and copying by the party making the request.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f) (1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234(f)(1) and (g))

**§ 81.17 Privileges.**

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.18 The record.**

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and the transcript made available to the parties upon request at no charge.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.19 Costs and fees of parties.**

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings under this part. Regulations under that statute are in 34 CFR Part 21.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f), 3474(a))

## Subpart B—Hearings for Recovery of Funds

**§ 81.20 Basis for recovery of funds.**

(a) Subject to the provisions of § 81.21, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental offcial may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a) (1) and (2))

**§ 81.21 Measure of recovery.**

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in § 81.22;

(b) In the case of a State agency or a local educational agency, excludes any amount attributable to mitigating circumstances under the standards in § 81.23; and

(c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under § 81.24.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(k), 1234b (a) and (b), 3474(a))

**§ 81.22 Proportionality.**

(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which it received the grant or cooperative agreement.

(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:

(i) Serving only eligible beneficiaries.

(ii) Providing only authorized services or benefits.

(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.

(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.

(v) Maintaining accountability for the use of funds.

(b) The appendix to this part contains examples that illustrate how the standards for proportionality apply. The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234b(a) and 3474(a))

**§ 81.23 Mitigating circumstances.**

(a) A recipient that is a State or local educational agency and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the **Federal Register** under this section;

(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice;

(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and

(4) The recipient's reliance on the guidance was reasonable.

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice;

(2) The request was submitted to the Department at the address provided by notice published in the **Federal Register** under this section;

(3) The request—

(i) Accurately described the proposed expenditure or practice; and

(ii) Included the facts necessary for the Department's determination of its legality;

(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—

(i) Examined the proposed expenditure or practice; and

(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;

(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;

(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and

(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90–day period.

(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and

(3) The recipient's reliance on the decree was reasonable.

(e) If a Departmental official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234b(b), 3474(a))

**§ 81.24 Notice of a disallowance decision.**

(a) If an authorized Departmental official decides that a recipient must return funds under § 81.20, the official gives the recipient written notice of a disallowance decision. The official sends the notice by certified mail, return receipt requested, or other means that ensure proof of receipt.

(b) (1) The notice must state a prima facie case for the recovery of funds.

(2) For the purpose of this section, a prima facie case is a statement of the law and the facts that, unless rebutted, is sufficient to sustain the conclusion drawn in the notice. The facts may be set out in the notice or in a document that is identified in the notice and available to the recipient.

(3) A statement that the recipient failed to maintain records required by law or failed to allow an authorized representative of the Secretary access to those records constitutes a prima facie case for the recovery of the funds affected.

(i) If the recipient failed to maintain records, the statement must briefly describe the types of records that were not maintained and identify the recordkeeping requirement that was violated.

(ii) If the recipient failed to allow access to records, the statement must briefly describe the recipient's actions that constituted the failure and identify the access requirement that was violated.

(c) The notice must inform the recipient that it may—

(1) Obtain a review of the disallowance decision by the OALJ; and

(2) Request mediation under § 81.13.

(d) The notice must describe—

(1) The time available to apply for a review of the disallowance decision; and

(2) The procedure for filing an application for review.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(a), 3474(a))

**§ 81.25 Reduction of claims.**

The Secretary or an authorized Departmental official as appropriate may, after the issuance of a disallowance decision, reduce the amount of a claim established under this subpart by—

(a) Redetermining the claim on the basis of the proper application of the law, including the standards for the measure of recovery under § 81.21, to the facts;

(b) Compromising the claim under the Federal Claims Collection Standards in 4 CFR Part 103; or

(c) Compromising the claim under § 81.26, if applicable.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(j), 3474(a); 31 U.S.C. 3711)

**§ 81.26 Compromise of claims under General Education Provisions Act.**

(a) The Secretary or an authorized Departmental official as appropriate may compromise a claim established under this subpart without following the procedures in 4 CFR Part 103 if—

(1) (i) The amount of the claim does not exceed $200,000; or

(ii) The difference between the amount of the claim and the amount agreed to be returned does not exceed $200,000; and

(2) The Secretary or the official determines that—

(i) The collection of the amount by which the claim is reduced under the compromise would not be practical or in the public interest; and

(ii) The practice that resulted in the disallowance decision has been corrected and will not recur.

(b) Not less than 45 days before compromising a claim under this section, the Department publishes a notice in the **Federal Register** stating—

(1) The intention to compromise the claim; and

(2) That interested persons may comment on the proposed compromise.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(j), 3474(a))

**§ 81.27 Application for review of a disallowance decision.**

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the OALJ.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision. Upon receipt of a copy of the filed material, the authorized Departmental official who made the disallowance decision provides the ALJ with a copy of any document identified in the notice under § 81.24(b)(2).

(c) An application for review must contain—

(1) A copy of the disallowance decision of which review is sought;

(2) A statement certifying the date the recipient received the notice of that decision;

(3) A short and plain statement of the disputed issues of law and fact, the recipient's position with respect to these issues, and the disallowed funds the recipient contends need not be returned; and

(4) A statement of the facts and the reasons that support the recipient's position.

(d) The ALJ who considers a timely application for review that substantially complies with the requirements of paragraph (c) of this section may permit the recipient to supplement or amend the application with respect to issues that were timely raised. Any requirement to return funds that is not timely appealed becomes the final decision of the Department.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(b)(1), 3474(a))

**§ 81.28 Consideration of an application for review.**

(a) The ALJ assigned to the case under § 81.4 considers an application for review of a disallowance decision.

(b) The ALJ decides whether the notice of a disallowance decision meets the requirements of § 81.24, as provided by section 451(e) of GEPA.

(1) If the notice does not meet those requirements, the ALJ—

(i) Returns the notice, as expeditiously as possible, to the authorized Departmental official who made the disallowance decision;

(ii) Gives the official the reasons why the notice does not meet the requirements of § 81.24; and

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested.

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns.

(c) If the notice of a disallowance decision meets the requirements of § 81.24, the ALJ decides whether the application for review meets the requirements of § 81.27.

(1) If the application, including any supplements or amendments under § 81.27(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that

the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of § 81.27, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(e) and (f)(1), 1234a(b), 3474(a))

**§ 81.29 Submission of evidence.**

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an acceptable application for review under § 81.27.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(c), 3474(a))

**§ 81.30 Burden of proof.**

If the OALJ accepts jurisdiction of a case under § 81.28, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable;

(b) The recipient discharged its obligation to account properly for the funds;

(c) The amount required to be returned does not meet the standards for proportionality in § 81.22;

(d) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in § 81.23; or

(e) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(b)(3), 1234b(b)(1), 3474(a))

**§ 81.31 Initial decision.**

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) On the day the ALJ makes the initial decision, the ALJ—

(1) Sends the initial decision to the Secretary; and

(2) Sends the initial decision to each of the parties by hand-delivery or by certified mail, return receipt requested.

(d) For the purpose of this part, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C 1221e–3(a)(1), 1234(f)(1), 3474(a))

**§ 81.32 Petition for review of an initial decision.**

(a) If a party wishes to obtain the Secretary's review of the initial decision of an ALJ, the party files a petition for review with the OALJ, which sends the petition to the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery or by overnight or express mail.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand-delivery or by overnight or express mail.

(d) A petition for review must contain—

(1) The identity of the initial decision of which review is sought; and

(2) A statement of the reasons asserted by the party for affirming the initial decision, modifying it, or setting it side in whole or in part.

(e) (1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The OALJ sends the statement to the Secretary.

(2) A party shall serve a copy of its statement of views on the other party on the filing date by hand-delivery or by overnight or express mail.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

**§ 81.33 Review by the Secretary.**

(a) The Secretary reviews the initial decision of an ALJ on the petition of a party under § 81.32. An interlocutory decision of an ALJ is not subject to review except as a part of a review of the ALJ's initial decision.

(b) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case filed during the review process.

(c) (1) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(2) The Secretary, for good cause, may remand the case to the ALJ to take further evidence. The ALJ may make new or modified findings of fact and may modify the initial decision. The new or modified findings, if supported by substantial evidence, are conclusive.

(3) A party may not introduce new evidence after an initial decision unless the Secretary determines that extraordinary circumstances made the introduction of the evidence during the proceeding before the ALJ impossible. If the Secretary permits the introduction of new evidence, the Secretary remands the case to the ALJ.

(d) The Secretary, for good cause, may remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(e) (1) If the Secretary modifies or sets aside an initial decision, in whole or in part, the Secretary's decision includes a statement of the reasons that support it.

(2) The Secretary gives a decision to modify, remand, or set aside to the OALJ, which sends the decision to each of the parties by hand-delivery or by mail. If the decision is mailed, the OALJ sends it certified mail, return receipt requested.

(Authority: 5 U.S.C. 557(b); 20 U.S.C. 12321e3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

**§ 81.34 Final decision of the Department.**

(a) The ALJ's initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ's decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ's initial decision, the Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234a(g), 3474(a))

**§ 81.35 Collection of claims.**

(a) An authorized Departmental official collects a claim established under this subpart by using the standards and procedures in 34 CFR Part 30.

(b) A claim established under this subpart may be collected—

(1) 30 days after a recipient receives notice of a disallowance decision if the recipient fails to file an acceptable application for review under § 81.27; or

(2) On the date of the final decision of the Department under § 81.34 if the recipient obtains review of a disallowance decision.

(c) The Department takes no collection action pending judicial review of a final decision of the Department under section 458 of GEPA.

(d) If a recipient obtains review of a disallowance decision under § 81.28, the Department does not collect interest on the claim for the period between the date of the disallowance decision and

the date of the final decision of the Department under § 81.34.

(Authority: 20 U.S.C. 1234(f)(1); 1234a(f)(1) and (2), (i), and (1))

## Appendix—Illustrations of Proportionality

(1) *Ineligible beneficiaries.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those children. Although the services were authorized, the children were not eligible to receive them.

(2) *Ineligible beneficiaries.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted was 19. Project costs relating to the remaining five students must be returned.

(3) *Ineligible beneficiaries.* Same as the example in paragraph (b)(2) of this section, except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute. Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.

(4) *Ineligible beneficiaries.* Same as the example in paragraph (b)(2) of this section, except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the LEA must return its entire award because it did not provide services authorized by the statute.

(5) *Unauthorized activities.* An LEA uses ten percent of its grant under a Federal program that authorizes activities only to meet the special educational needs of educationally deprived children to pay for health services that are available to all children in the LEA. All the children who use the Federally funded health services happen to be educationally deprived, and thus eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the health services. Although the children were eligible to receive program services, the health services were unrelated to a special educational need and, therefore, not authorized by law.

(6) *Set-aside requirement.* A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) *Set-aside requirement.* A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational education services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) *Excess cost requirement.* An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) *Maintenance-of-effort requirement.* An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources for program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1986 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant—the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, the statute made maintenance of expenditures a clear condition of the LEA's eligibility to receive funds and did not provide for a proportional reduction in the grant award, the LEA would be required to return its entire grant.

(10) *Supplanting prohibition.* An LEA uses funds under a Federal drug education program to provide drug abuse prevention counseling to students in the eighth grade. The LEA is required to provide that same counseling under State law. Funds under the Federal program statute are subject to a supplement-not-supplant requirement. Result: All the funds used to provide the required counseling to the eighth-grade students must be returned. The Federal funds did not increase the total amount of spending for program purposes because the counseling would have been provided with non-Federal funds if the Federal funds were not available.

(11) *Matching requirement.* A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds were unmatched.

(12) *Application requirements.* In order to receive funds under a Federal program that supports a wide range of activities designed to improve the quality of elementary and secondary education, an LEA submits an application to its State educational agency (SEA) for a subgrant to carry out school-level basic skills development programs. The LEA submits its application after conducting an assessment of the needs of its students in consultation with parents, teachers, community leaders, and interested members of the general public. The Federal program statute requires the application and consultation processes. The SEA reviews the LEA's application, determines that the proposed programs are sound and the application is in compliance with Federal law, and approves the application. After the LEA receives the subgrant, it unilaterally decides to use 20 percent of the funds for gifted and talented elementary school students—an authorized activity under the Federal statute. However, the LEA does not consult with interested parties and does not amend its application. Result: 20 percent of

the LEA's subgrant must be returned. The LEA had no legal authority to use Federal funds for programs or activities other than those described in its approved application, and its actions with respect to 20 percent of the subgrant not only impaired the integrity of the application process, but caused significant harm to other Federal interests associated with the program as follows: the required planning process was circumvented because the LEA did not consult with the specified local interests; program accountability was impaired because neither the SEA nor the various local interests that were to be consulted had an opportunity to review and comment on the merits of the gifted and talented program activities, and the LEA never had to justify those activities to them; and fiscal accountability was impaired because the SEA and those various local interests were, in effect, misled by the LEA's unamended application regarding the expenditure of Federal funds.

(13) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law. The grantee's violation has not measurably harmed a Federal interest associated with the program.

(Authority: 20 U.S.C. 1221e–3(a)(1), 1234(f)(1), 1234b(a), 3474(a))

**Note:** The following appendix will not appear in the Code of Federal Regulations.

## Appendix—Analysis of Comments and Responses

### Subpart A—General Provisions

*Section 81.2 Definitions*

*Comment:* Some commenters suggested that the statutory term "preliminary departmental decision" be substituted for the term "disallowance decision" to describe the decision of an authorized Departmental official that a recipient must return funds that were misspent or unaccounted for. Two commenters were under the mistaken impression that auditors are authorized to make such a decision.

*Response:* The term "disallowance decision" is retained in the regulations because it accurately describes the kind of decision to which the recovery of funds provisions of GEPA apply. The decision is not strictly preliminary. If review of the decision is not sought within the 30 days provided by the statute, it becomes the final decision of the Department, without further action, by operation of law. Neither is such a decision final when made, because it is subject to review by the OALJ. To avoid confusion concerning the effect of a "disallowance decision," the definition of the term has been amplified to clarify that it is simply a more precise alternative to the statutory term "preliminary departmental decision" and that it is subject to review by the OALJ.

A disallowance decision is made by the official responsible for administering the award in question. The facts considered by the official may come from an audit report, but audit findings are recommendatory in nature and do not constitute disallowance decisions.

*Section 81.4 Membership and Assignment to Cases.*

*Comment:* Commenters suggested that this section incorporate the requirements of section 451(b) and (c) of GEPA, relating to the appointment of Administrative Law Judges (ALJs) to serve in the OALJ.

*Response:* No change has been made. The statutory requirements are referred to in the definition of the term "Administrative Law Judge" in § 81.2.

*Section 81.5 Authority and Responsibility of an Administrative Law Judge*

*Comment:* One commenter suggested that the regulation reflect the provisions of section 451(f)(1) of GEPA, relating to the applicability of certain provisions of the Administrative Procedure Act (APA) to OALJ proceedings. Another commenter objected to § 81.5(d)(1), which authorizes an ALJ to disqualify himself or herself from a case and suggested that the OALJ rather than the ALJ dispose of a motion to disqualify.

*Response:* No change has been made. The regulations in Part 81 conform to the applicable provisions of the APA, and citations to those provisions—5 U.S.C. 554, 556, and 557—appear in the citations of authority following the text of the regulations where appropriate. The provision on self-disqualification in § 81.5(d)(1) conforms to 5 U.S.C. 556(b), which appears in the citation of authority following this section of the regulations. The Secretary intends that the disqualification provision be interpreted in the light of 28 U.S.C. 455, relating to the disqualification of a Federal judge.

*Section 81.6 Hearing on the Record.*

*Comment:* Several comments were received concerning the circumstances in which the ALJ should hear oral presentations from the parties. Commenters suggested changes that ranged from giving a party an absolute right to compel an evidentiary hearing and oral argument to maintaining the standard in the proposed regulations but adding a provision to govern the procedure by which a party may argue that an oral presentation is needed.

*Response:* Several changes have been made in the regulation. A new paragraph (c) has been added to require that the ALJ confer with the parties in person or by conference telephone call on the need for an evidentiary hearing or oral argument if a party requests such a conference. Paragraph (b) has been amended to permit different approaches in the future for proceedings other than those addressed in this document. The term "evidentiary hearing" is used in paragraph (b)(1) to be consistent with other sections of the regulations. Finally, the standards in paragraph (b)(2) for determining whether an oral argument is needed have been amended to maximize the ALJ's discretion.

In the hearings for recovery of funds addressed in this document, it is the responsibility of the ALJ to regulate the course of the proceedings "to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law." Section 81.5(a). In the Secretary's view, neither law nor reason requires that the resources of the ALJ and the parties be consumed by oral presentations that are not needed to resolve issues in the case. The Secretary relies upon the full-time, professional judges who conduct the hearings to determine, in the exercise of their good judgment and discretion, whether an evidentiary hearing or an oral argument is necessary in the circumstances of the particular case.

*Section 81.7 Non-party Participation*

*Comment:* One commenter suggested that the regulation specify the period of time a non-party has to apply to participate in a case. Two commenters offered suggestions for more detailed standards to govern whether a non-party may participate. One commenter suggested the regulations provide for non-party participation only to the extent of the parties' participation.

*Response:* This section has been retitled "non-party participation" to clarify the status of the participants. Paragraph (d) has been amended to permit non-party participation in oral presentations only to the extent that those presentations are available to the parties. A new paragraph (e) has been added to require that non-party participants comply with the requirements for parties stated in § 81.11, concerning motions, and § 81.12 concerning filing requirements.

The Secretary does not consider it necessary to include in the standards for participation the level of detail suggested by the comments. The ALJ to whom a case is assigned is afforded wide latitude in considering requests from non-parties to participate in the case. Clearly, an applicant that files a request to participate early in the course of the proceedings is likely to be more easily accommodated than one that files late. Similarly, an applicant that has a direct financial interest in the outcome of the case has a stronger basis for participation than most. However, the circumstances of the particular case, viewed in the context of the ALJ's responsibilities under § 81.5, are the best guide for determinations in this area.

*Section 81.9 Location of Proceedings*

*Comment:* Several commenters objected to the justification required under the proposed regulation to hold proceedings outside the Washington, DC. metropolitan area.

*Response:* The regulation has been amended to incorporate a standard taken from the APA under which the ALJ's decision on the location of proceedings turns on the convenience and necessity of the parties and their representatives.

*Section 81.12 Filing Requirements*

*Comment:* One commenter objected to the requirement that a party file material and serve a copy of the material on the other party "simultaneously."

*Response:* The regulation has been amended to provide for service of the filed material on the other party on the filing date. Conforming changes have also been made in other sections of the regulations that require service of filed material on the other party. In addition, a new paragraph (c) has been added to require that filings be accompanied by a statement certifying the date of filing and service on the other party.

*Section 81.13 Mediation*

*Comment:* One commenter suggested that this section of the regulations incorporate the standards governing the measure of recovery in hearings for recovery of funds. Another suggested the parties themselves, in addition to the ALJ, be permitted to select the mediator. A third expressed strong support for mediation and other alternative means of dispute resolution and suggested several provisions to encourage the use of the mediation process, including automatic notice of the availability of mediation, ALJ authority to compel a party's attendance at mediation, authority of the parties to vary procedural rules, and confidentiality of communications made during mediation.

*Response:* The regulation has been amended to clarify that the Office of Administrative Law Judges, not the ALJ himself or herself, arranges for a mediator if the parties to a case agree to mediation. The Secretary considers the selection of an independent mediator acceptable to both parties to be a responsibility of the Department. Changes in the regulation are unnecessary to accommodate some of the commenters' suggestions. The standards on measure of recovery must be applied in a notice of a disallowance decision and at every subsequent stage of the proceedings, including any settlement reached as a result of mediation. Recipients of disallowance decisions are automatically notified of their right to request voluntary mediation under § 81.24(c)(2). Provisions on the confidentiality of communications made during mediation are found in § 81.13(e). Other suggested changes were either unnecessary under the regulation as written or inconsistent with the voluntary nature of mediation under section 451(h) of GEPA.

*Section 81.15 Evidence*

*Comment:* One commenter suggested deleting the requirement that evidence accepted by the ALJ be material. Two others objected to the exclusion of "unduly repetitious" evidence.

*Response:* No change has been made. The exclusion of irrelevant, immaterial, and unduly repetitious evidence is contemplated by 5 U.S.C. 556(d). The application of these standards is properly reserved to the sound discretion of the ALJ.

*Section 81.16 Discovery*

*Comment:* Three commenters suggested that the regulation require the Department to make available for examination and copying by the recipient the audit work papers that relate to a disallowance decision. Another commenter suggested adding procedures for the ALJ's review of privileged material and authorizing the ALJ to impose sanctions for failure to comply with an order to disclose that material.

*Response:* The regulation has been amended to clarify the statutory authority of an ALJ to compel a party to produce relevant documents. Adopting the approach of Rule 34 of the Federal Rules of Civil Procedure, the regulation provides that an ALJ may order a party to make those documents available for inspection and copying by the party making the request. Pursuant to the policy in favor of voluntary disclosure of relevant documents and information stated in paragraph (a) of the regulation, the Department currently makes audit work papers in its possession available for recipients to examine and copy.

Procedures for the review of privileged material are, under these regulations, reserved to the ALJ's discretion. If a party fails to comply with an ALJ's subpoena requiring the production of documents, section 451(g) of GEPA authorizes the ALJ to apply to the appropriate court of the United States for its enforcement.

*Section 81.17 Privileges*

*Comment:* Three commenters suggested deleting this regulation on the grounds that it duplicates a provision in the preceding section or that it is unnecessary. Another commenter suggested adding provisions on how a legal privilege may be asserted.

*Response:* No change has been made. The Secretary believes that the regulation as written serves a useful purpose in describing how the law on privileges should be interpreted. The regulation adopts the approach of Rule 501 of the Federal Rules of Evidence.

*Section 81.22 Proportionality*

*Comment:* One commenter suggested that provisions relating to the recovery of funds in proportion to harm caused to a Federal interest be deleted from the regulations, since they restate the statute. Another suggested that the regulation restrict consideration of the proportionality issue to the ALJ alone. Several commenters suggested that the hypothetical examples of how the standards for proportionality apply be deleted from the test of the regulations; some suggested including the examples in nonregulatory guidance. Some commenters objected to certain examples, generally on the grounds that the hypothetical fact patterns inaccurately described actual cases or that the amount of the recovery was too high.

*Response:* No change has been made in paragraph (a) of the regulation, which states the standards for proportionality. These standards govern an important part of the Department's enforcement procedures, and their retention in this section promotes a better understanding of the references to proportionality elsewhere in the regulations.

The suggested limitation on who may consider the proportionality issue has not been adopted. The statute contemplates that the standards for proportionality are an element of the administrative enforcement process from the recommendation that funds be

recovered through the Secretary's review of an ALJ's initial decision. The auditor who recommends that funds be recovered, the program official who reviews that recommendation, the parties to any mediation or settlement negotiations, the ALJ who reviews a disallowance decision, and the Secretary in his review of the ALJ's initial decision must take the standards for proportionality into account in performing their functions. Moreover, limiting consideration of proportionality to ALJs would be contrary to reason. Program officials would be unable to apply porportionality in determining the amount of disallowances, and recipients would be forced to appeal the resulting decisions to bring the concept into play. The precedents developed by ALJs in these cases would be virtually useless because program officials would not be able to apply them.

The examples that illustrate how the standards for proportionality apply have been removed from paragraph (b) of the regulation and placed in an appendix to the regulations. These examples represent the Secretary's interpretation of the statutory provisions on proportionality in hypothetical cases. Their purpose is to promote predictable, consistent, and equitable results in the enforcement of grant conditions. To the extent that the hypothetical cases illustrate principles that apply to actual misexpenditures of funds, the Department will apply those principles. Some of the examples have been amended in response to comments recieved, as follows:

- *Example #5.* Several commenters suggested that the example in the proposed regulations was inconsistent with the holding in *California* v. *Bennett*, 849 F.2d 1227 (9th Cir. 1988), a case involving the allowability of certain field trips under Title I of the Elementary and Secondary Education Act. The example did not address whether field trips are an authorized activity under Title I or any other Federal program, but was intended to illustrate only the appropriate measure of recovery if eligible beneficiaries receive unauthorized services. To clarify the illustration, the unauthorized activities in the example have been changed to the provision of health services that are available to all children in the LEA.
- *Example #9.* Two commenters stated that the recovery of the entire grant in the circumstances described in the last sentence of this example was excessive. That sentence has been amended to clarify that the hypothetical statute in question is unambiguous and inflexible in its terms. In such a case, the remedy for a seemingly excessive recovery of funds lies in the legislative process.
- *Example #10.* Some commenters criticized this example on grounds relating to the nature of current drug education programs. The example was intended to illustrate not the application of a particular program requirement, but rather the appropriate measure of recovery where a requirement had been violated. The example has been amended to clarify this point.
- *Example #12.* Some commenters criticized the results in this example and in Example #13 of the proposed regulations as too harsh. As a result, Example #12 has been amplified to illustrate more clearly how the recipient's violations of planning and application requirements harmed important and indentifiable Federal interests associated with the program under which the grant was received, as provided in § 81.22(a). The other example in the proposed regulations relating to application requirements has been deleted as unnecessary to illustrate the principle in question.

*Section 81.23 Mitigating Circumstances*

*Comment*: Several commenters offered observations and suggestions on the provisions of this regulation. Two commenters suggested that paragraph (a) expressly address a case in which all the identified misexpenditures, not just some, were attributable to mitigating circumstances. Some objected to, or expressed confusion about, the provisions of paragraphs (b) (1) and (2), concerning erroneous written guidance for the Department, and (c) (1) and (2), concerning guidance requested but not received.

*Response:* No change in paragraph (a) is needed to ensure that any amount of a misexpenditure attributable to mitigating circumstances is not required to be returned to the Department; this proposition is addressed in § 81.21(b). However, the regulation has been amended in other respects. The procedures in paragraph (b), concerning requests for authoritative guidance, have been simplified. Paragraph (b) implements section 453(b)(2)(A) of GEPA, read in light of the legislative history of that provision. Under the statute, a recipient may place reasonable reliance upon "erroneous written guidance provided by the Department." GEPA, § 453(b)(2)(A). The Conference Committee report explains this provision as follows:

> "Written guidance" is intended to mean written guidance issued at the Office of Director level o[r] above, addressing, a specific request from a local or State educational agency regarding a policy, interpretation, or question pursuant to a Federal law, implementing regulations, or non-binding guidance issued by the Secretary. It is not intended to encompass telephone conversations, informal discussions at conferences, informational handouts provided at meetings with Department of Education staff, or written communication below the Office of Director level, unless such communication meets the requirements of section 453(b)(2)(B).
>
> S. REP. NO. 100-222, 100th Cong., 1st Sess. 392 (1987).

The quoted legislative history is reflected in paragraph (b) (1) and (2) of the regulation. As amended, this paragraph requires that, to prove mitigating circumstances, the recipient prove, in part, that the erroneous guidance it relied on was provided in response to a specific written request submitted to the Department at the address provided by notice published in the **Federal Register**. The notice referred to in this provision appears elsewhere in this issue of the **Federal Register**. While recipients need not send requests to the designated address prior to the effective date of these regulations, they are invited to do so to ensure that their requests received appropriate attention. Recipients are encouraged to identify the programs to which their requests pertain by Catalog of Federal Domestic Assistance numbers or other specific information.

The procedures in paragraph (c) for submitting formal guidance requests under section 453 (b)(2)(B) and (b)(5) of GEPA have been simplified along similar lines. In response to comment, the requirement that a formal guidance request be submitted by certified mail, return receipt requested, has been deleted.

*Section 81.24 Notice of a Disallowance Decision*

*Comment:* Commenters offered various suggestions intended to ensure that a recipient of a notice of a disallowance decision is fairly apprised of the legal and factual basis of the decision. The thrust of the suggestions was that the regulation should specify the contents of the notice in greater detail to facilitate the recipient's response.

*Response:* The regulation has been amended in several respects. Paragraph (b)(1) incorporates one commenter's suggestion to require that a notice of a disallowance decision "state" a prima facie case. Paragraph (b)(2) has been

amended to provide that, if the notice relies on facts in another document—such as an audit report or a monitoring report—the document must be identified in the notice and available to the recipient. Paragraph (b)(3) has been amended to set out the elements of a prima facie case where a recipient failed to maintain records or failed to allow access to records.

*Section 81.27 Application for Review of a Disallowance Decision*

*Comment:* One commenter suggested challenges in the regulation to allow changes to the sufficiency of a notice of a disallowance decision and to permit amendments to applications for review if new issues are later raised. Another commenter suggested that the regulation require that recipients be permitted the opportunity to amend any inadequate application.

*Response:* The language of the regulation as written permits a recipient to challenge the sufficiency of a prima facie case for the recovery of funds, and the regulation has therefore not been changed to provide expressly for such a challenge. If the ALJ to whom the case is assigned sustains a challenge to a prima facie case, the notice of a disallowance decision is returned to the official who issued it. Section 81.28(b)(1). If that official then modifies and reissues the notice, the recipient's ability to raise issues relating to the merits of the modification is fully preserved. The modified notice is, in effect, a new notice of a disallowance decision, and the recipient may file a new application for review raising any issues it chooses.

Paragraph (d) of the regulation has been amended to clarify the circumstances in which the ALJ may permit a recipient to supplement or amend its application with respect to issues that were timely raised. So long as the application substantially complies with the requirements in paragraph (c) for the contents of an application, the ALJ may permit such supplements or amendments as a fair, expeditious, and economical resolution of the case requires. The Secretary believes this approach is consistent with basic fairness and permissible under section 452(b)(1) of GEPA, which requires that an application for review be submitted not later than 30 days after the recipient's receipt of a notice of a disallowance decision.

In addition to the amendments described above, the regulation has been amended to require that an application for review contain a statement certifying the date the recipient received the notice of a disallowance decision and to require the Departmental official who made the decision to provide the ALJ with supporting documents identified in the notice as soon as the application for review is filed.

*Section 81.28 Consideration of an Application for Review*

*Comment:* One commenter suggested limiting an authorized Departmental official to two opportunities to state a prima facie case for the recovery of funds. Two commenters offered suggestions relating to the opportunity of a recipient to correct deficiencies in an application for review.

*Response:* No change has been made. A Departmental official's opportunity to state a claim for the recovery of misspent or unaccounted-for funds is limited by the statute of limitations at section 452(k) of GEPA, which, under these regulations, runs until a prima facie case is stated. However, the period for issuing disallowance decisions to ensure that grant funds are spent in accordance with the law is not otherwise limited by the statute. A recipient's opportunity to supplement or amend an application for review is addressed in the response under § 81.27 above.

*Section 81.29 Submission of Evidence*

*Comment:* One commenter suggested that paragraph (a) be amended to clarify that the 90-day period for the submission of evidence runs from the OALJ's receipt of an "acceptable" application for review.

*Response:* The suggestion has been adopted in amended regulatory language.

*Section 81.30 Burden of Proof*

*Comment:* Several commenters suggested that a recipient's obligation to account for funds, as stated in paragraph (a) of the proposed regulation, be rephrased by deleting the word "fully." One commenter objected to the phraseology of paragraphs (b) and (d) of the proposed regulation as placing an unfair burden on recipients.

*Response:* The reference to a recipient's obligation to account properly for funds has been revised to follow the language of section 452(a)(1) of GEPA. In addition, the regulation has been reorganized to enumerate separately each of the elements as to which a recipient, in a particular case, has the burden of proof in the review of a disallowance decision.

*Section 81.32 Petition for Review of an Initial Decision*

*Comment:* Commenters objected to certain provisions of the proposed regulation relating to the time and manner of filing a petition for review and serving a copy of the petition on the other party. One commenter asked for a clarification of the reference to reasons for affirming an initial decision, contained in paragraph (d)(2) of the regulation.

*Response:* The provisions on filing and service have been amended in two respects. A party may use "overnight or express mail," and it must serve filed materials on the other party "on the filing date."

The reference in paragraph (d)(2) to a statement of reasons for affirming an initial decision has been retained. The regulations are structured to permit a party to submit a petition for review and affirmance of an initial decision. The statute allows a petition for review to be filed as late as 30 days after receipt of the initial decision, and it provides that the initial decision becomes final 30 days later unless the Secretary has ruled otherwise. Without the opportunity to file a petition in support of the initial decision, the party that favored affirmance would be required to wait for the other party to file its petition for review in opposition to the decision. To permit the best possible advocacy within the statutory timeframe, a provision for a peitition in support of the initial decision has therefore been adopted.

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## DEPARTMENT OF EDUCATION

### Office of Intergovernmental and Interagency Affairs

### Procedure for Requesting Authoritative Guidance under Part E of the General Education Provisions Act

**AGENCY:** Department of Education.

**ACTION:** Notice of procedure for requesting authoritative guidance under Part E of the General Education Provisions Act.

In this issue of the **Federal Register**, the Secretary of Education issues final regulations implementing amendments to Part E of the General Education Provisions Act (GEPA) made by Pub. L. 100–297, enacted April 28, 1988. Section 81.23 of those regulations provides that a State or local educational agency that has received a grant or cooperative agreement under an applicable program and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to certain "mitigating circumstances."

Section 81.23(b) of the regulations, relating to erroneous written guidance from the Department of Education, provides in relevant part as follows:

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the Department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the **Federal Register** under this section; [and]

(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice[.]

Section 81.23(c) of the regulations, relating to the Department's failure to provide timely guidance, provides in relevant part as follows:

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice; [and]

(2) The request was submitted to the Department at the address provided by notice published in the **Federal Register** under this section[.]

Requests for guidance referred to in the above-quoted provisions of § 81.23(b) and (c) must be submitted to the following address: U.S. Department of Education, Box 4799, Washington, D.C.; 20202–4799.

Departmental officials who are authorized to provide guidance under § 81.23(b)(2), quoted above, are listed below.

Office of Management, Deputy Under Secretary for Management Comptroller, Director, Grants and Contracts Service, Director, Financial Management Service.
Office of Elementary and Secondary Education, Assistant Secretary for Elementary and Secondary Education.
Office of Postsecondary Education, Assistant Secretary for Postsecondary Education.
Office of Educational Research and Improvement, Director of Library Programs, Director of Programs for the Improvement of Practice, Director, Fund for the Improvement and Reform of Schools and Teaching, Director, Office of Research.
Office of Special Education and Rehabilitative Services, Assistant Secretary for Special Education and Rehabilitative Services.
Office of Vocational and Adult Education, Director, Division of Vocational-Technical Education, Director, Division of National Programs, Director, Division of Adult Education.
Office of Bilingual Education and Minority Languages Affairs, Director, Office of Bilingual Education and Minority Languages Affairs.

**EFFECTIVE DATE:** Recipients that want to submit requests for guidance prior to the effective date of the final regulations referred to in this notice may send them to the address in this notice. Requests submitted after the effective date of the regulations must be submitted to that address to come within the terms of the regulations. The regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of the regulations, call or write the Department of Education's contract person.

**FOR FURTHER INFORMATION CONTACT:** Barry W. Stevens, U.S. Department of Education, Office of General Counsel, 400 Maryland Ave. SW., Room 4091 FOB–6, Washington, DC 20202; Telephone: (202) 732–2730.

Dated: April 12, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

[FR Doc. 89–10875 Filed 5–4–89; 8:45 am]

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federal register

Friday
May 5, 1989

Part VIII

# Environmental Protection Agency

40 CFR Part 300

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Update No. 8; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL-3566-6]**

## National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Update No. 8

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency ("EPA") is proposing the eighth update to the National Priorities List ("NPL"). This update proposes to add 10 new sites to the NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982 pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

These sites are being proposed because they meet the listing requirements of the NPL. This notice provides the public with an opportunity to comment on placing these sites on the NPL.

This proposed rule brings the number of proposed NPL sites to 283, 22 of them in the Federal section; 890 are on the final NPL, 41 of them in the Federal section. Final and proposed sites now total 1,173.

**DATES:** Comments must be submitted on or before July 5, 1989.

**ADDRESSES:** Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460. Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Tina Maragousis, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/382-3046
Evo Cunha, Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203, 617/565-3300
U.S. EPA, Region 2, Document Control Center, Superfund Docket, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, Latchmin Serrano, 212/264-5540, Ophelia Brown, 212/264-1154
Diane McCreary, Region 3, U.S. EPA Library, 5th Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580
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David Bennett, Region 10, U.S. EPA, 9th Floor, 1200 6th Avenue, Mail Stop HW-093, Seattle, WA 98101, 206/442-2103

**FOR FURTHER INFORMATION CONTACT:** Martha Otto, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (OS-230), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC metropolitan area).

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

*Background*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9657 ("CERCLA" or the "Act") in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et. seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to SARA. EPA intends to issue the revised HRS as soon as possible. However, until the proposed revisions have been subject to public comment and put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained on March 31, 1989 (54 FR 13296).

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous

substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #7 on June 24, 1988 (53 FR 23988).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 26 sites from the final NPL.

This notice proposes to add 10 sites to the NPL. Adding these 10 sites to the 273 sites previously proposed brings the total number of proposed sites to 283. The final NPL contains 890 sites, for a total of 1,173 final and proposed sites.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

*Public Comment Period*

This **Federal Register** notice opens the formal 60-day comment period for NPL Update #8. Comments may be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff), Office of Emergency and Remedial Response (OS–230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Headquarters and Regional public dockets for the NPL (see **ADDRESSES** portion of this notice) contain documents relating to the scoring of these proposed sites. The dockets are available for viewing "by appointment only" after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket for NPL Update #8 contains HRS score sheets for each proposed site, a Documentation Record for each site describing the information used to compute the score, a list of documents referenced in the Documentation Record, and pertinent information for any site affected by statutory requirements and listing policies.

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the formal comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add to the NPL all proposed sites that meet EPA's requirements. In past NPL rulemakings, EPA has considered, to the extent practicable, comments received after the close of the comment period. EPA will attempt to do so in this rulemaking as well.

*Early Comments*

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

*Comments Lacking Specificity*

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation to EPA should indicate what specific points in that documentation EPA is to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill* v. *Thomas & EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988) cert. pending No. 88–1035, during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

*Availability of Information*

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

**II. Purpose and Implementation of the NPL**

*Purpose*

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)):

> The priority lists serves primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

*Implementation*

A site can undergo remedial action financed by the Trust Fund only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the focus of EPA's enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.65–67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL—that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the type and extent of contamination. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

*RI/FS at Proposed Sites.* An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). (Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * *." The definition of "removal" also includes "action taken under section 104(b) of this Act * * *," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.)

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

*Facility (Site) Boundaries.* A "facility" is defined under CERCLA section 101(9) and the NCP at 40 CFR 300.6 as "(A) any building, structure, * * * well, pit, pond, * * * or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located * * *." (The term "site" is frequently used interchangeably with facility.) The "come to be located" language implements the broad remedial purposes of CERCLA, giving EPA authority to clean up contamination when it has spread from the original source. In *U.S. v. Bliss*, 667 F. Supp. 1298, 1305 (E.D. Mo. 1987), the courts have affirmed this interpretation:

> As the Special Master noted succinctly in *United States v. Conservation Chemical Co.*, 619 F. Supp. [162,] at 185 [(W.D.Mo. 1985)], "simply put, the term 'facility' includes any place where hazardous substances come to be located."
>
> Thus, to show that an area is a "facility", the plaintiff need only show that a hazardous substance has been placed there or has "otherwise come to be located" there.

The extent of the contamination, and thus the "facility", is first described when a release or threatened release is scored using the HRS. However, HRS scoring and the subsequent listing of a release merely represent the initial determination that a certain area may need to be addressed under CERCLA. Accordingly, EPA contemplates that the preliminary description of facility boundaries at the time of scoring will need to be refined and improved as more information is developed as to where the contamination has come to be located; this refining step generally comes during the RI/FS stage. As the NCP provides at 40 CFR 300.68(d):

> An RI/FS shall * * * determine the nature and extent of the threat presented by the release and * * * evaluate proposed remedies. This includes * * * the gathering of sufficient information to determine the necessity for and proposed extent of remedial action.

The preliminary description of a facility when it is listed does not preclude the Agency, during the RI/FS, from following the contamination as far as it goes, and then considering the facility, for response purposes, as the entire area where hazardous substances have come to be located, even if that area extends beyond the boundary for which the site was named.

## III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure": (1) Factors that

indicate the presence or likelihood of a release to the environment; (2) factors that indicate the nature and quantity of the substances presenting the potential threat; and (3) factors that indicate the human or environmental "targets" potentially at risk from the site. Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

States have the primary responsibility for identifying sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet the eligibility criteria (and EPA's additional listing requirements) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the NPL.

## IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL. The listing policies and statutory requirements of particular relevance to this proposed rule cover sites involving Subtitle C of the Resource Conservation and Recovery Act (RCRA) and sites with "special study wastes." They are discussed below. These and other listing policies and statutory requirements have been explained in greater detail in previous rulemakings, the latest being June 24, 1988 (53 FR 23978 and 53 FR 23988).

### *Releases From Resource Conservation and Recovery Act (RCRA) Sites*

On June 10, 1986 (51 FR 21054), EPA announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to RCRA Subtitle C corrective action authorities. Under the policy, sites not subject to RCRA Subtitle C corrective action authorities will continue to be placed on the NPL. Examples of such site include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.
- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters, which are not required to have Interim Status or a final RCRA permit.

Also under the policy, certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criteria for listing (e.g., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake correction action.

On August 9, 1988 (53 FR 30005), EPA published a policy for determining whether RCRA facilities are unwilling to perform corrective actions, and therefore should be proposed to the NPL. Additionally, on August 9, 1988 (53 FR 30002), EPA published a policy statement requesting comment on a policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site.

On June 24, 1988 (53 FR 23978), EPA proposed to list RCRA sites in several other categories which the Agency considers appropriate for placement on the NPL. These categories are non- or late filers, converters, protective filers, and sites holding permits issued before enactment of the Hazardous and Solid Waste Amendments of 1984.

This update proposes a RCRA site in the converter category:

- Tri-Cities Barrel Co., Inc., Port Crane, New York.

Documents supporting the RCRA determination for this site are available for review in both the Headquarters and appropriate Regional docket.

Commenters are encouraged to provide documentation where they believe EPA's RCRA determination is in error.

*Releases of Special Study Wastes*

Section 105(g) of CERCLA, as amended by SARA, requires additional information before sites involving RCRA "special study wastes" can be proposed for the NPL (until revisions to the HRS are effected). Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) (drilling fluids), 3001(b)(3)(A)(ii) (mining wastes), and 3001(b)(3)(A)(iii) (cement kiln dust). Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constitutents of any special study waste at or released from the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

Update #8 proposes three sites containing or potentially containing special study wastes. EPA has placed in the dockets addenda that evaluate for each proposed site the information called for in section 105(g). The addenda indicate that the special study wastes present a threat to human health and the environment, and that the sites should be proposed to the NPL. The site sare:

- Eastern Michaud Flats Contamination, Pocatello, Idaho.
- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, Idaho.
- Monsanto Chemical Co. (Soda Springs Plant), Soda Springs, Idaho.

CERCLA section 125, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) (fly ash and related wastes). No sites in this rule are subject to the provisions of section 125.

## V. Contents of Proposed NPL Update #8

Table 1 following this preamble lists 10 sites proposed for the NPL in Update #8. Each entry contains the name of the facility and the State and city or county in which it is located. All sites received HRS scores of 28.50 or above.

Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed update has a score that falls within the range of scores covered by a the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. The report will be available shortly. In the interim, information on activities at the new proposed sites is available in the site summaries or upon request to the appropriate Regional Office.

## VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

*Costs*

EPA has determied that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this proposed rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and constuction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the states may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

| Cost category | Average total cost per site [1] |
|---|---|
| RI/FS | 1,100,000 |
| Remedial Design | 750,000 |
| Remedial Action | [2] 13,500,000 |
| Net present value of O&M [3] | [2] 3,770,000 |

[1] 1988 U.S. Dollars
[2] Includes State cost-share
[3] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA.

Costs to States associated with today's proposed rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites which are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 10 sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $20 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately $32 million.

Proposing a hazardous waste site for the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects of firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

*Benefits*

The real benefits associated with today's proposal to place additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

## VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites on the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 10 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

**List of Subjects in 40 CFR Part 300**

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: April 27, 1989.

**Jonathan Z. Cannon,**

*Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.*

It is proposed to amend 40 CFR Part 300 as follows:

## PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

2. It is proposed to add the following sites by group to Appendix B of Part 300

TABLE 1.—NATIONAL PRIORITIES LIST, PROPOSED UPDATE 8 SITES (BY GROUP) MAY 1989

| NPL Gr[1] | St/Site name | City/County |
|---|---|---|
| 1 | PA Publicker Industries Inc. | Philadelphia. |
| 2 | ID Eastern Michaud Flats Contamin. | Pocatello. |

TABLE 1.—NATIONAL PRIORITIES LIST, PROPOSED UPDATE 8 SITES (BY GROUP) MAY 1989—Continued

| NPL Gr[1] | St/Site name | City/County |
|---|---|---|
| 3 | ID Monsanto Chemical (Soda Springs). | Soda Springs. |
| 4 | ID Kerr-McGee Chemical (Soda Springs). | Soda Springs. |
| 6 | NY Tri-Cities Barrel Co., Inc. | Port Crane. |
| 10 | MO St Louis Airport/ HIS/Fut Coatings. | St. Louis County |
| 10 | UT Utah Power & Light/American Barrel. | Salt Lake City. |
| 11 | MI Allied Paper/ Portage Ck/ Kalamaz R. | Kalamazoo. |
| 12 | IA Sheller-Globe Corp. Disposal. | Keokuk. |
| 14 | NC Hevi-Duty Electric Co. | Goldsboro. |

Number of Sites Proposed for Listing: 10

[1] Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

[FR Doc. 89-10723 Filed 5-4-89; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Friday
May 5, 1989

Part IX

# Department of Education

## Office of Postsecondary Education

## Talent Search Program; Notice of Proposed Priority

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Talent Search Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priority.

**SUMMARY:** The Secretary of Education proposes to establish a priority for a fiscal year 1989 grant competition under the Talent Search Program for awards of two years' duration. Under this priority, approximately $2.9 million would be reserved for proposals from current Talent Search Program grantees proposing to attract project participants in the seventh and eight grades in order to encourage them to complete high school and continue their education at the postsecondary level after graduation.

**DATE:** Comments must be received on or before June 5, 1989.

**ADDRESSES:** All comments concerning this porposed priority should be addressed to Jowava M. Leggett, Office of Postsecondary Education, U.S. Department of Education (Room 3060, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202–5249.

**FOR FURTHER INFORMATION CONTACT:** Jowava M. Leggett, (202) 732–4804.

**SUPPLEMENTARY INFORMATION:** As recently as March 1989, one of the country's major school systems acknowledged that over half of its current 40 percent dropout rate could be attributed to 7th and 8th grade students. Similar statistics on lower-grade dropouts are occurring in many other large metropolitan areas throughout the country. Increasingly, research studies, national educators and reports from well-respected bodies such as the Education Commission of the States are calling for targeted dropout prevention efforts at the elementary and middle school levels. Other organizations and institutions that have disseminated comprehensive reports advocating early interevention strategies are: The Carnegie Task Force on Education of Young Adolescents, American Council on Education, Massachusetts Advocacy Center, Center for Early Adolescence at the University of North Carolina, Edna McConnell Clark Foundation of Boston, and the California State Department of Education. It is significant also that the New York City school system has recently begun shifting resources from high schools to earlier grades with a veiw toward improved retention.

Empirical data which correlates the strong likelihood of college graduation with early identification and intervention with the at-risk pupil is available in the report of a three-year study of the Cleveland Scholarships Programs, Inc. This study concluded that 80 percent of the students who received guidance, assistance, and follow-up counseling through the program graduated from college, as against a national graduation rate of 50 percent. Other cities which have replicated the Cleveland program are: New York (NY); Boston (MA); Miami (FL); Richmond, Alexandria, and Norfolk (VA); and Dayton and Columbus (OH).

The new initiative for the Talent Search Program is clearly in concert with the national concern to address the devastating impact on the economy of this country's undereducated youth, and to respond to the urging of the Secretary to "stop dropouts * * * long before they happen." In the words of David Hornbeck, who chairs the Carnegie Task Force on Education of Young Adolescents, "Early adolescence * * * represents the 'last best chance' to instill the need for a solid education." This initiative falls under the Secretary's top priority for focusing existing resources on the problem of dropouts by complementing several efforts that are currently under way. In August 1988 the School Dropout Demonstration Assistance Program under Title VI, Part B of Pub. L. 100–297 awarded $24 million for the initial year of 89 two-year grants to LEA's, community-based organizations, and others to demonstrate effective approaches to preventing dropouts and encouraging dropouts to reenter school. Also, under the Cooperative Demonstration program of the Carl D. Perkins Act, $4.8 million will be awarded in May of this year for the initial year for approximately 15 three-year projects to demonstrate effective methods for keeping vocational education students in school and to attract dropouts to vocational education programs.

The Department will spend $2.5 million to evaluate the effectiveness of these two programs. Also, the 1990 budget for the Department includes increases to six programs to help serve the needs of students who are at risk of becoming dropouts. These programs include Chapter 1, Bilingual Education, Vocational Education, Indian Education, Immigrant Education, and Refugee Education. These increases would complement the results of this Talent Search initiative, which is designed to address the needs of 7th and 8th grade students and dropouts.

The Talent Search program serves the needs of dropout prevention and adds a second element to encourage students to enter postsecondary education. The current projects funded under the Talent Search program are completing the first year of their three-year awards. The need for dropout prevention for 7th and 8th grade students is of such national significance that the Department cannot wait two years for the next competitive cycle to begin serving the needs of these students. Therefore, the Secretary has decided to establish a competition for two-year awards to serve 7th and 8th grade students and dropouts. During this two-year period, the Department will assess the effectiveness of this special initiative in addressing the needs of 7th and 8th graders and determine the feasibility of the continuation of this initiative during the next Talent Search cycle.

The Secretary has decided to establish a priority limiting the competition for these two-year awards to current grantees under the Talent Search program. The current grantees already have a mechanism for serving students who are at risk of dropping out. Existing Talent Search projects have personnel experienced in providing services to resolve problems faced by older adolescents who are likely to drop out before graduation from high school. The priority will ensure that 7th and 8th grade students and dropouts are served by these experienced personnel. Early intervention at the 7th and 8th grade level must be supplemented with sustained support services in order to significantly reduce the large number of dropouts that occur later in the educational process.

In consideration of the foregoing and under the procedures in the Department of Education General Administrative Regulations at 34 CFR 75.105(c)(3), the Secretary proposes to establish the following priority for a fiscal year 1989 Talent Search grant competition.

#### Proposed Priority

Current grantees under the Talent Search Program may compete for 2-year projects that focus on serving 7th and 8th grade students and dropouts in order to encourage them to complete high school and continue their education at the postsecondary level after graduation, without regard to 34 CFR 643.3(a)(5).

#### Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this priority will be available for public inspection, during and after the comment period, in Room 3060, Regional Office Building number 3 (7th and D

Streets, SW), Washington, DC, between the hours of 8:30 a.m and 4:00 p.m., Monday through Friday of each week except Federal holidays.

**Authority:** 20 U.S.C. 1070d, 1070d–1b, and 1070d–1c.

(Catalog of Federal Domestic Assistance Number: 84.044—Talent Search Program)

Dated: April 7, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

[FR Doc. 89–10975 Filed 5–4–89; 8:45 am]

BILLING CODE 4000–01–M

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**S.J. Res. 60/Pub. L. 101-21**

To designate the period commencing on May 1, 1989, and ending on May 7, 1989, as "National Drinking Water Week." (May 2, 1989; 103 Stat. 49; 1 page) Price: $1.00

**S.J. Res. 84/Pub. L. 101-22**

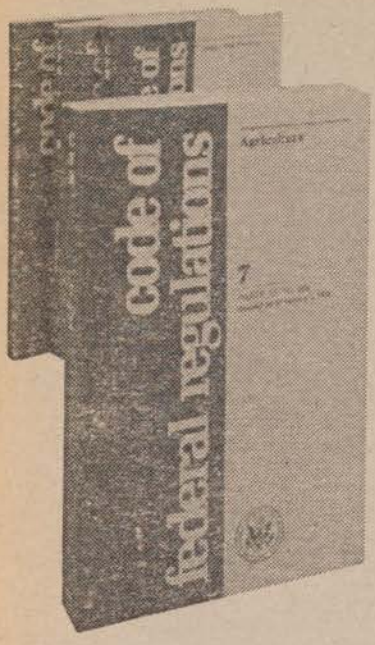
To designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day." (May 2, 1989; 103 Stat. 50; 1 page) Price: $1.00

**S.J. Res. 52/Pub. L. 101-23**

To express gratitude for law enforcement personnel. (May 2, 1989; 103 Stat. 51; 1 page) Price: $1.00



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